

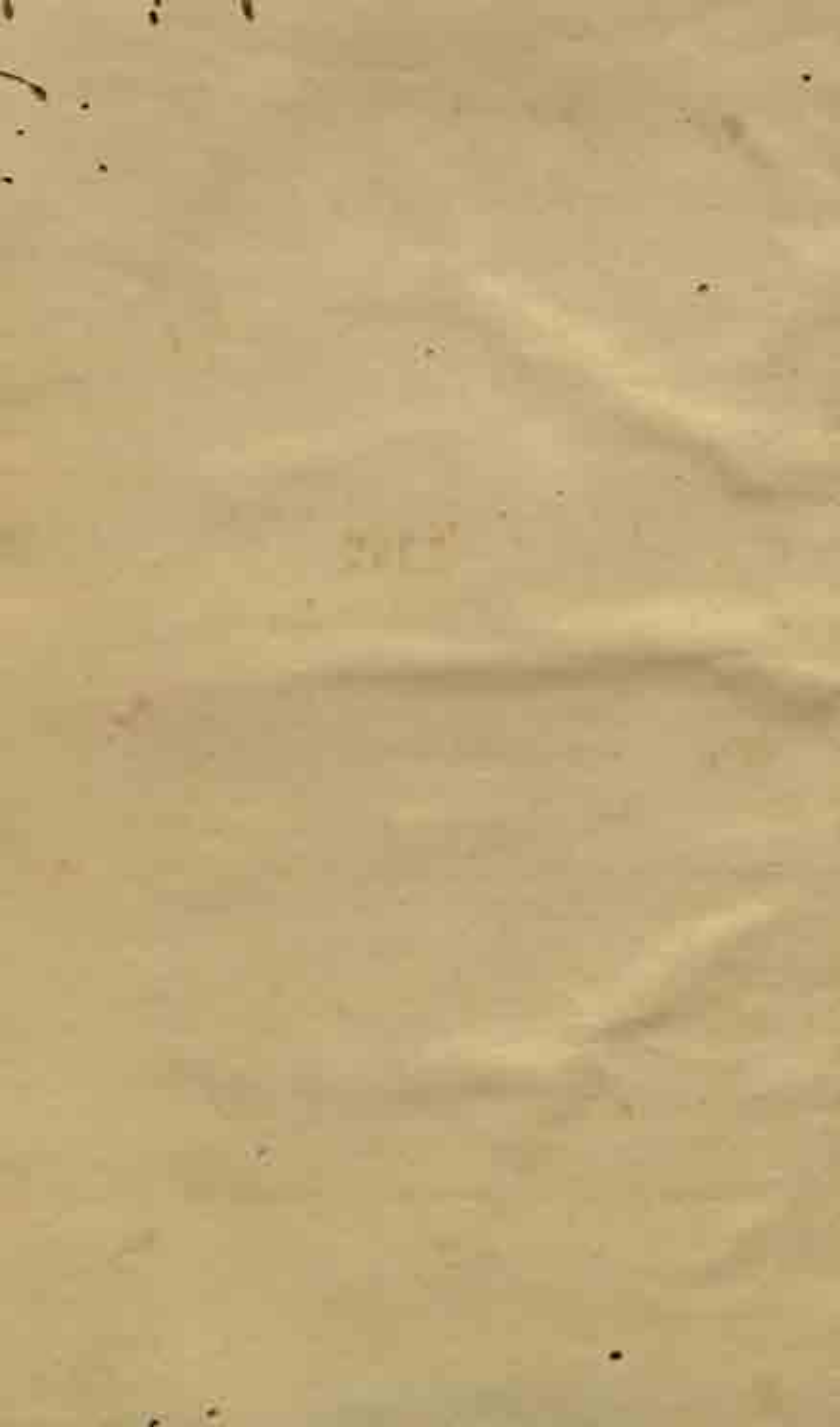
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HISTORY

OF THE

DECLINE AND FALL

OF THE

ROMAN EMPIRE.

13372

By EDWARD GIBBON, Esq.



TWELVE VOLUMES.

VOL. VIII.

A NEW EDITION.

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ROMAN EMPIRE

BY EDWARD GIBSON, I.C.S.

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THE ROMAN EMPIRE, FROM THE CONQUEST OF GREECE TO THE DEATH OF JULIUS CAESAR, 146 B.C. TO 44 B.C.

Edm. Gibson & Co. Printers, Bangalore.



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THE
HISTORY
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CHAP. XLIV.

Ides of the Roman jurisprudence—The laws of the kings—The twelve tables of the decemviri—The laws of the people—The decrees of the senate—The edicts of the magistrates and emperors—Authenticity of the civilians—Code, pandects, novels, and institutes of Justinian—I. Rights of persons—II. Rights of things—III. Private injuries and actions—IV. Crimes and punishments.

THE vain titles of the victories of Justinian are crumbled into dust; but the name of the legislator is inscribed on a fair and everlasting monument. Under his reign, and by his care, the civil jurisprudence was digested in the im-

CHAP.
XLIV.

The civil
or Roman
law.

mortal works of the CODE, the PANDECTS, and the INSTITUTES;* the public reason of the Romans has been silently or studiously transfused into the domestic institutions of Europe,^b and the laws of Justinian still command the respect or obedience of independent nations. Wise or fortunate is the prince who connects his own reputation with the honour and interest of a perpetual order of men. The defence of their founder is the first cause, which in every age has exercised the zeal and industry of the civilians. They piously commemorate his virtues; dissemble or deny his failings; and fiercely chastise the guilt or folly of the rebels who presume to sully the majesty of the purple. The idolatry of love has provoked, as it usually happens, the rancour of opposition; the character of Justinian has been exposed to the blind vehemence of flattery and invective, and the injustice of a sect (the *Anti-Tribonians*) has refused all praise and merit to the prince, his ministers,

* The civilians of the darker ages have established an absurd and incomprehensible mode of quotation, which is supported by authority and custom. In their references to the Code, the Pandects, and the Institutes, they mention the number not of the book, but only of the law—and content themselves with reciting the first words of the title to which it belongs; and of these titles there are more than a thousand. Ludewig (*Vie. Justinien*, p. 298) wishes to shake off this pedantic yoke; and I have dared to adopt the simple and rational method of numbering the book, the title, and the law.

^b Germany, Bohemia, Hungary, Poland, and Scotland, have received them as common law on reason; in France, Italy, &c. they possess a direct or indirect influence; and they were respected in England, from Stephen to Edward I, our national Justinian; (*Doct. Usu et Auctoritate Juris Civilis*, l. 3, c. 1, § 15. Heinecius, *Hist. Juris Germanici*, c. 3, 4, N^o. 55-124, and the legal historians of each country).

and his laws.* Attached to no party, interested only for the truth and candour of history, and directed by the most temperate and skilful guides,^d I enter with just diffidence on the subject of civil law, which has exhausted so many learned lives, and clothed the walls of such spacious libraries. In a single, if possible, in a short chapter, I shall trace the Roman jurisprudence from Romulus to Justinian,^e appretiate the labours of that emperor, and pause to contemplate the principles of a science so important to the peace and happiness of society. The laws of a nation form the most instructive portion of its history; and, although I have devoted myself to write the annals of a declining monarchy, I shall embrace

* Francis Hotoman, a learned and acute lawyer of the sixth century, wished to justify Cajacius, and to please the Chancellor de l'Hôpital. His *Anti-Termenianus* (which I have never been able to procure) was published in French in 1609; and his sect was propagated in Germany. (Heinecius, Opp. tom. iii, sylloge iii, p. 171-183).

^d At the head of these guides I shall respectfully place the learned and perspicuous Heinecius, a Göttingen professor, who died at Halle in the year 1741, (see his *Elige* in the *Nouvelle Bibliothèque Germanique*, tom. ii, p. 31-34). His single works have been collected in eight volumes in 4to, Götting. 1743-1748. The treatises which I here separately meet are, 1. *Historia Juris Romani et Germanici*, Ludg. Batav. 1740, in 8vo. 2. *Synagoga Antiquitatum Romanarum Jurisprudentiarum Illustratum*, 2 vols. in 8vo, Traject. ad Rhenum. 3. *Elementa Juris Civilis secundum Ordinem Institutionum*, Ludg. Bat. 1731, in 8vo. 4. *Elementa J. C. secundum Ordinem Pandectarum*, Traject. 1772, in 8vo, 2 vols.

^e Our original text is a fragment de *Origine Juris* (Paoctet. l. i. tit. ii) of Pomponius, a Roman lawyer, who lived under the Antonines, (Heinecc. tom. iii, syl. iii, p. 66-126). It has been abridged, and probably corrupted, by Tribonian, and since restored by Ryndershoek. (Opp. tom. i, p. 273-304).



CHAP. the occasion to breathe the pure and invigorating
 XLIV. air of the republic.

Laws of
 the kings
 of Rome.

The primitive government of Rome¹ was composed with some political skill, of an elective king, a council of nobles, and a general assembly of the people. War and religion were administered by the supreme magistrate; and he alone proposed the laws, which were debated in the senate, and finally ratified or rejected by a majority of votes in the thirty *curiæ* or parishes of the city. Romulus, Numa, and Servius Tullius, are celebrated as the most ancient legislators; and each of them claims his peculiar part in the threefold division of Jurisprudence.² The laws of marriage, the education of children, and the authority of parents, which may seem to draw their origin from *nature* itself, are ascribed to the untutored wisdom of Romulus. The law of *nations* and of religious worship, which Numa introduced, was derived from his nocturnal converse with the nymph Egeria. The *civil* law is attributed to the experience of Servius: he balanced the rights and fortunes of the seven classes of citizens; and guarded, by fifty new regulations, the observance of contracts and the punishment of crimes. The state, which he had inclined towards a democracy, was changed by

¹ The constitutional history of the kings of Rome may be studied in the first book of Livy; and more copiously in Dionysius Halicarnassensis, l. ii. p. 80-96, 119-130; l. iv. p. 128-226, who sometimes betrays the character of a rhetorician and a Greek.

² This threefold division of the law was applied to the three Roman kings by Julius Lipsius, (Opp. tom. iv. p. 279); is adopted by Gravina, (Origines Juris Civilis, p. 28, edit. Lips. 1737); and is reluctantly admitted by Maurea, his German editor.

the last Tarquin into lawless despotism; and when the kingly office was abolished, the patricians engrossed the benefits of freedom. The royal laws became odious or obsolete; the mysterious deposit was silently preserved by the priests and nobles; and, at the end of sixty years, the citizens of Rome still complained that they were ruled by the arbitrary sentence of the magistrates. Yet the positive institutions of the kings had blended themselves with the public and private manners of the city; some fragments of that venerable jurisprudence^a were compiled by the diligence of antiquarians,^b and above twenty texts still speak the rudeness of the Pelasgic idiom of the Latins.^c

^a The most ancient Code or Digest was styled *Jus Papirianum*, from the first compiler, Papirius, who flourished somewhat before or after the *Reges*, (Pandect. l. i. tit. 10). The best judicial critics, even Bynkershoek, (tom. i. p. 284, 285), and Hemocerus, (Hist. J. C. R. l. i. c. 16, 17, and Opp. tom. iii. sylloge iv. p. 1-8), give credit to this tale of Pomponius, without sufficiently adverting to the value and rarity of such a monument of the third century, of the *illustre* city. I much suspect that the *Cains Papirius*, the Pontifex Maximus, who revived the laws of Numa, (*Origines* Hist. l. iii. p. 121), left only an oral tradition; and that the *Jus Papirianum* of Gracius Flaccus, (Pandect. l. x. tit. xvi. leg. 144), was not a commentary, but an original work, compiled in the time of Cæsar, (*Comment. de Die Natali*, l. iii. p. 13. Duker de Latinitate J. C. p. 137).

^b A pompous, though feeble, attempt to restore the original, is made in the *Histoire de la Jurisprudence Romaine* of Tournay, p. 22-22, Paris, 1750, in favor of a work of more promise than performance.

^c In the year 1444, seven or eight tables of brass were dug up between Cortona and Gubbio. A part of these, for the rest is Etruscan, represents the primitive state of the Pelasgic letters and language, which are ascribed by Herodotus to that district of Italy, (H. l. c. 58, 57, 58); though this difficult passage may be explained of a Cretan in Thrace, (*Notes de Larcher*, tom. i. p. 256-261). The savage dialect of the Etruscan tables has exercised, and may still excite, the attention of erudition; but the rest is undoubtedly Latin, of the

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XLIV.

The twelve
tables of
the decemvirs.

I shall not repeat the well-known story of the decemvirs,¹ who sullied by their actions the honour of inscribing on brass, or wood, or ivory, the TWELVE TABLES of the Roman laws.² They were dictated by the rigid and jealous spirit of an aristocracy, which had yielded with reluctance to the just demands of the people. But the substance of the twelve tables was adapted to the state of the city; and the Romans had emerged from barbarism, since they were capable of studying and embracing the institutions of their more enlightened neighbours. A wise Ephesian was driven by envy from his native country: before he could reach the shores of Latium, he had observed the various forms of human nature and civil society; he imparted his knowledge to the legislators of Rome, and a statue was erected in the forum to the perpetual memory of Hermodorus.³ The names

same age and character as the Sallustian Carmen, which, in the time of Horace, none could understand. The Roman idiom, by an infusion of Doric and Ionic Greek, was gradually ripened into the style of the old tables, of the Duilian columns, of Ennius, of Terence, and of Cicero, (*Orator*, *Inscript.* tom. i. p. 131). See also Maffei, *Italia Diplomatica*, p. 241-258. *Bibliothèque Italique*, tom. ii. p. 30-41. 174-204; tom. xiv. p. 1-52.

¹ Compare Livy (l. iii. c. 31-39) with Dionysius Halicarnassensis, (l. x. p. 844-81, p. 891). How coarse and animated is the Roman—how profuse and lifeless is the Greek? Yet he has admirably judged the masters, and defined the rules of historical composition.

² From the historians, Hæmstenius (*Hist. J. E. L. i. N° 26*) maintains that the twelve tables were of brass—*ærea*: in the text of Pomponius we read *ærea*; for which Scaliger has substituted *rebreve*, (*Hyacinthæa*, p. 286). Wood, brass, and ivory, might be successively employed.

³ His exile is mentioned by Cicero, (*Tractatus Quintus*, v. 36); his statue by Pliny, (*Hist. Nat.* xxxiv. 11). The letter, decree, and prophecy

and divisions of the copper money, the sole coin of the infant state, were of Dorian origin: the harvests of Campania and Sicily relieved the wants of a people whose agriculture was often interrupted by war and faction; and since the trade was established,² the deputies who sailed from the Tiber, might return from the same harbours with a more precious cargo of political wisdom. The colonies of Great Greece had transported and improved the arts of their mother-country. Cumæ and Rhegium, Crotona and Tarentum, Agrigentum and Syracuse, were in the rank of the most flourishing cities. The disciples of Pythagoras applied philosophy to the use of government; the unwritten laws of Charondas accepted the aid of poetry and music,³ and Zaleucus framed the republic of the Locrians, which stood without alteration above two hundred years.⁴ From a simi-

prophesy of Hermitus, see alibi apudius. (Epistola Græc. Divers. p. 331).

² This intricate subject of the Sicilian and Roman money, is ably discussed by Dr. Bentley, (Dissertation on the Epistles of Phalaris, p. 427-479), whose powers in this controversy were called forth by honour and resentment.

³ The Romans, or their allies, sailed as far as the fair promontory of Africa, (Polyb. l. iii, p. 177, edit. Canabon, in folio). Their voyages to Cumæ, &c. are noticed by Livy and Diodorus.

⁴ This circumstance would alone prove the antiquity of Charondas, the legislator of Rhegium and Catena, who, by a strange error of Diodorus Siculus, (tom. i, l. iii, p. 463-492), is mistaken long afterwards as the author of the policy of Thurium.

⁵ Zaleucus, whose existence has been rarely attacked, had the merit and glory of converting a band of outlaws (the Locrians) into the most virtuous and orderly of the Greek republics, (see two Memoires of the Baron de St. Croix, sur la Legislation de la Grande Grèce; Mem. de l'Académie, tom. xlii, p. 276-323). But the laws of Zaleucus



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XLIV.

lar motive of national pride, both Livy and Dionysius are willing to believe, that the deputies of Rome visited Athens under the wise and splendid administration of Pericles; and the laws of Solon were transfused into the twelve tables. If such an embassy had indeed been received from the barbarians of Hesperia, the Roman name would have been familiar to the Greeks before the reign of Alexander; and the faintest evidence would have been explored and celebrated by the curiosity of succeeding times. But the Athenian monuments are silent; nor will it seem credible that the patricians should undertake a long and perilous navigation to copy the purest model of a democracy. In the comparison of the tables of Solon with those of the decemvirs,

and Clarendon, which imposed on Viodorus and Stobæus, are the spurious composition of a Pythagorean arphist, whose fraud has been detected by the critical sagacity of Bentley, (p. 335-377).

* I seize the opportunity of tracing the progress of this national intercourse: 1. Herodotus and Thucydides (A. U. C. 330-330) appear ignorant of the name and existence of Rome, (*Geograph. contra Apollon. torn. ii. l. 4 c. 12, p. 444, edit. Hermann.*) 2. Thucydides (A. U. C. 400, *Plin. iii. 9*) mentions the invasion of the Gauls, which is noticed in lower terms by Heraclides Ponticus, (*Plutarch in Camille, p. 292, edit. H. Stephan.*) 3. The real or fabulous embassy of the Romans to Alexander (A. U. C. 450) is attested by Clichtonius, (*Plin. iii. 9*); by Arrian and Aetymologus, (*Arrian, l. vii. p. 294, 295*), and by Menæmus of Heraclea, (*apud Photium, cod. cccxiv, p. 725*); though tacitly denied by Livy. 4. Theophrastus (A. U. C. 440) *primus exterorum aliqui de Romanis diligentius scripti*, (*Plin. iii. 9*). 5. Lycophron (A. U. C. 480-500) scattered the first seed of a Trojan colony and the fall of the Æneid, (*Cassiodorus, l. 226-1290*).—

*For the fabulous embassy see previous
Addenda.*

A bold prediction before the end of the first Punic war.

some casual resemblance may be found: some rules which nature and reason have revealed to every society; some proofs of a common descent from Egypt or Phœnicia.¹ But in all the great lines of public and private jurisprudence, the legislators of Rome and Athens appear to be strangers or adverse to each other.

Whatever might be the origin or the merit of the twelve tables,² they obtained among the Romans that blind and partial reverence which the lawyers of every country delight to bestow on their municipal institutions. The study is recommended by Cicero³ as equally pleasant and instructive. "They amuse the mind by the remembrance of old words and the portrait of ancient manners; they inculcate the soundest principles of government and morals; and I am not afraid to affirm, that the brief composition of the decemvirs surpasses in genuine value the libraries of Grecian philosophy. How admirable," says Tully, with honest or affected prejudice, "is the wisdom of our ancestors! We alone are the masters of civil

¹ The tenth table, *de modo sepulture*, was borrowed from Solon. (Cicero de Legibus, li, 23-29): the *fortuna per lapides et licium conceptum*, is derived by Hæmulus from the manners of Athens. (Antiquitat. Rom. tom. ii, p. 361-375). The right of killing a nocturnal thief, was declared by Moses, Solon, and the decemvirs. (Broderus, xlii, 3. Demosthenes contra Timarchium, tom. i, p. 110, edit. Benke. Macrobi. Saturnalia, l. i, c. 4. Collatio Legum Mosaicarum et Romanarum, tit. xii, N. 1, p. 118, edit. Canstatt.)

² *Æquum res æquæque* is the praise of Theodorus, (tom. i, l. xli, p. 494,) which may be fairly translated by the elegant and absolute brevitate verborum of Aulus Gellius, (Noct. Attic. xxi, 1).

³ Listen to Cicero, (de Legibus, li, 23), and his representative Cæcilius, (de Oratore, i, 43, 44).

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"prudence, and our superiority is the more conspicuous, if we deign to cast our eyes on the "rude and almost ridiculous jurisprudence of "Dracon, of Solon, and of Lycurgus." The twelve tables were committed to the memory of the young and the meditation of the old: they were transcribed and illustrated with learned diligence: they had escaped the flames of the Gauls, they subsisted in the age of Justinian, and their subsequent loss has been imperfectly restored by the labours of modern critics.² But although these venerable monuments were considered as the rule of right, and the fountain of justice,³ they were overwhelmed by the weight and variety of new laws, which, at the end of five centuries, became a grievance more intolerable than the vices of the city.⁴ Three thousand brass plates, the acts of the senate and people, were deposited in the Capitol:⁵ and some of the acts, as the Julian law against extortion, surpassed the number of an hundred chapters.⁶ The decemvirs had neglected to import the sanction of Zaleucus, which so long maintained the integrity

² See Humeccius, (Hist. J. R. N^o. 29-33). I have followed the restoration of the 12 tables by Grævina (Origines J. C. p. 280-367) and Totauson, (Hist. de la Jurisprudence Romaine, p. 94-205).

³ *Fides aequi juris*, (Tacit. Annal. iii, 37). *Fides omnis publici et privati juris*, (C. Liv. iii, 34).

⁴ *De principis juris, et quibus modis ad hanc multitudinem infinitam et incalcentem legum pervenimus et alias discedam*, (Tacit. Annal. iii, 73). This deep disquisition fills only two pages, but they are the pages of Tacitus. With equal sense, but with less energy, Ulp (iii, 34) had complained, in hac humeris illorum super alios accervatarum legum cumulo, &c.

⁵ Suetonius in Vespasiano, c. 8.

⁶ *Quero ad Familiares*, viii, 8.

of his republic. A Locrian who proposed any new law, stood forth in the assembly of the people with a cord round his neck, and if the law was rejected, the innovator was instantly strangled.

The decenvirs had been named, and their tables were approved, by an assembly of the *centuries*, in which riches preponderated against numbers. To the first class of Romans, the proprietors of one hundred thousand pounds of copper,* ninety-eight votes were assigned, and only ninety-five were left for the six inferior classes, distributed according to their substance by the artful policy of Servius. But the tribunes soon established a more specious and popular maxim, that every citizen has an equal right to enact the laws which he is bound to obey. Instead of the *centuries*, they convened the *tribes*; and the patricians, after an impotent struggle, submitted to the decrees of an assem-

Laws of
the people.

* Dionysius, with Aristotle, and most of the moderns, except Elmslehurst de Ponderibus, &c. p. 137-140, represent the 100,000 *asses* by 10,000 Attic drachmæ, or somewhat more than 300 pounds sterling. But their calculation can apply only to the latter times, when the *as* was diminished to $\frac{1}{24}$ th of its ancient weight: nor can I believe that in the first ages, however destitute of the precious metals, a single ounce of silver could have been exchanged for seventy pounds of copper or brass. A more simple and rational method is, to value the copper itself according to the present rate, and, after comparing the mint and the market price, the Roman and Attic weight, the primitive *as* or Roman pound of copper may be appraised at one English shilling, and the 100,000 *asses* of the first *as* amounted to 2,000 pounds sterling. It will appear from the same reckoning, that an ox was sold at Rome for five pounds, a sheep for ten shillings, and a quarter of wheat for one pound ten shillings, (Festus, p. 350, edit. Dacier: Plin. Hist. Natur. xviii. 4): nor do I see any reason to reject these consequences, which manifest our ideas of the poverty of the first Romans.

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bly, in which their votes were confounded with those of the meanest plebeians. Yet as long as the tribes successively passed over narrow *bridges*,* and gave their voices aloud, the conduct of each citizen was exposed to the eyes and ears of his friends and countrymen. The insolvent debtor consulted the wishes of his creditor; the client would have blushed to oppose the views of his patron: the general was followed by his veterans, and the aspect of a grave magistrate was a living lesson to the multitude. A new method of secret ballot abolished the influence of fear and shame, of honour and interest, and the abuse of freedom accelerated the progress of anarchy and despotism.[†] The Romans had aspired to be equal; they were levelled by the equality of servitude; and the dictates of Augustus were patiently ratified by the formal consent of the tribes or centuries. Once, and once only, he experienced a sincere and strenuous opposition. His subjects had resigned all political liberty; they defended the freedom of domestic life. A law which enforced the obligation, and strengthened the bonds of marriage, was clamorously rejected; Propertius, in the arms of Delia, applauded the victory of licentious love; and the project of reform was suspended till a new and more tractable generation had arisen in

* Consult the common writers on the Roman Comitia, especially Sigonius and Beaufort. Spaulheim (*de Præstantiâ et Uti Nominum*, tom. ii, dissert. x, p. 192, 193) shews, on a curious medal, the *Cista*, *Pompa*, *Septa*, *Diribitor*, &c.

† Cicero (*de Legibus*, iii, 16, 17, 18) debates this constitutional question, and assigns to his brother Quintus the most unpopular side.

the world.³ Such an example was not necessary to instruct a prudent usurper, of the mischief of popular assemblies; and their abolition, which Augustus had silently prepared, was accomplished without resistance, and almost without notice, on the accession of his successor.⁴ Sixty thousand plebeian legislators, whom numbers made formidable, and poverty secure, were supplanted by six hundred senators, who held their honours, their fortunes, and their lives, by the clemency of the emperor. The loss of executive power was alleviated by the gift of legislative authority; and Ulpian might assert, after the practice of two hundred years, that the decrees of the senate obtained the force and validity of laws. In the times of freedom, the resolves of the people had been often dictated by the passion or error of the moment: the Cornelian, Pompeian, and Julian laws, were adapted by a single hand to the prevailing disorders: but the senate, under the reign of the Caesars, was composed of magistrates and lawyers, and in questions of private jurisprudence, the integrity of their judgment was seldom perverted by fear or interest.⁵

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Decrees of
the senate.

The silence or ambiguity of the laws was supplied by the occasional EDICTS of those magis-

Edicts of
the pro-
tore.

³ *Pro tumultu rancantium proferre non potui*, Cluent. in August. c. 34). See Propertius, l. ii, eleg. 6. Heineccius, in a separate history, has exhausted the whole subject of the Julian and Papian-Poppæan laws, (Opp. tom. vii, P. i, p. 1-479).

⁴ Tacit. Annal. i, 15. Lipsius, Excursus E. in Tacitum.

⁵ *Non ambigitor senatum sua facere potest*, is the sentence of Ulpian, G. xvi, ad Edict. in Pandect. l. i, tit. iii, leg. 39. Pomponius takes the comitia of the people as a *turbis legumibus*, (Pandect. l. i, tit. ii, leg. 39).



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trates who were invested with the *honours* of the state.* This ancient prerogative of the Roman kings, was transferred, in their respective offices, to the consuls and dictators, the censors and pretors; and a similar right was assumed by the tribunes of the people, the ediles, and the pro-consuls. At Rome, and in the provinces, the duties of the subject, and the intentions of the governor, were proclaimed; and the civil jurisprudence was reformed by the annual edicts of the supreme judge, the pretor of the city. As soon as he ascended his tribunal, he announced by the voice of the crier, and afterwards inscribed on a white wall, the rules which he proposed to follow in the decision of doubtful cases, and the relief which his equity would afford from the precise rigour of ancient statutes. A principle of discretion more congenial to monarchy was introduced into the republic: the art of respecting the name, and eluding the efficacy, of the laws, was improved by successive pretors; subtleties and fictions were invented to defeat the plainest meaning of the decemvies, and where the end was salutary, the means were frequently absurd. The secret or probable wish of the dead was suffered to prevail over the order of succession and the forms of testaments; and the claimant, who was excluded from the character of heir, accepted with equal pleasure from an indulgent pretor the

* The *jus honorarium* of the pretors and other magistrates, is strictly defined in the Latin text of the Institutes, (l. i, tit. ii, §. 7), and more loosely explained in the Greek paraphrase of Theophilus, (p. 31-38, edit. Weitz), who drops the important word *honorarium*.

possession of the goods of his late kinsman or benefactor. In the redress of private wrongs, compensations and fines were substituted to the obsolete rigour of the twelve tables; time and space were annihilated by fanciful suppositions; and the plea of youth, or fraud, or violence, annulled the obligation, or excused the performance, of an inconvenient contract. A jurisdiction thus vague and arbitrary was exposed to the most dangerous abuse; the substance, as well as the form, of justice, were often sacrificed to the prejudices of virtue, the bias of laudable affection, and the grosser seductions of interest or resentment. But the errors or vices of each pretor expired with his annual office; such maxims alone as had been approved by reason and practice were copied by succeeding judges; the rule of proceeding was defined by the solution of new cases; and the temptations of injustice were removed by the Cornelian law, which compelled the pretor of the year to adhere to the letter and spirit of his first proclamation.¹ It was reserved for the curiosity and learning of Hadrian, to accomplish the design which had been conceived by the genius of Caesar: and the pretorship of Salvius Julian, an eminent lawyer, was immortalized by the composition of the PERPETUAL EDICT. This

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The perpetual
edict.

¹ Dion Cassius (tom. i. l. xxvi. p. 100) fixes the perpetual edict in the year of Rome 685. Their institution, however, is ascribed to the year 385 in the *Acta Diurna*, which have been published from the papers of Ludovicus Vives. Their authenticity is supported or allowed by Pighius, (*Annal. Roman.* tom. ii. p. 377, 378); Grævius, (*ad Sueton.* p. 778); Dodwell, (*Præfationes. Cantabrig.* p. 663), and Heineccius: but a single word, *Sentum*, *Græcæque*, betrays the forgery, (*Moyle's Works*, vol. 3, p. 303).

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tions of
the em-
perors.

well-digested code was ratified by the emperor and the senate; the long divorce of law and equity was at length reconciled; and, instead of the twelve tables, the perpetual edict was fixed as the invariable standard of civil jurisprudence.*

From Augustus to Trajan, the modern Cæsars were content to promulgate their edicts in the various characters of a Roman magistrate: and, in the decrees of the senate, the *epistles* and *orations* of the prince were respectfully inserted. Hadrian* appears to have been the first who assumed, without disguise, the plenitude of legislative power. And this innovation, so agreeable to his active mind, was countenanced by the patience of the times, and his long absence from the seat of government. The same policy was embraced by succeeding monarchs, and, according to the harsh metaphor of Tertulian, "the gloomy and intricate forest of ancient laws was cleared away by the axe of royal mandates and constitutions."† During four centuries, from Hadrian to Justinian, the public and private jurisprudence was moulded

* The history of edicts is composed, and the text of the perpetual edict is restored, by the master-hand of Heineccius, (Opp. tom. vii. P. ii. p. I-524): to whose researches I may safely acquiesce. In the Academy of Inscriptions, M. Bouchard has given a series of memoirs to this interesting subject of law and literature.

* His laws are the first in the Code. See Dodwell, (Prælect. Cambden, p. 315-346), who wanders from the subject in confused reading and double product.

* Totam illam veterum et squallentem sylvam legum novis principum receptorum et edictorum semitibus rursus et castris, (Apolonius, c. 4, p. 50, edit. Havercamp). He proceeds to praise the recent firmness of Severus, who repealed the useless or pernicious laws without any regard to their age or authority.

by the will of the sovereign; and few institutions, either human or divine, were permitted to stand on their former basis. The origin of imperial legislation was concealed by the darkness of ages and the terrors of armed despotism; and a double fiction was propagated by the servility, or perhaps the ignorance, of the civilians who basked in the sunshine of the Roman and Byzantine courts. 1. To the prayer of the ancient Caesars, the people or the senate had sometimes granted a personal exemption from the obligation and penalty of particular statutes; and each indulgence was an act of jurisdiction exercised by the republic over the first of her citizens. His humble privilege was at length transformed into the prerogative of a tyrant; and the Latin expression of "released from the laws,"^{*} was supposed to exalt the emperor above *all* human restraints, and to leave his conscience and reason, as the sacred measure of his conduct. 2. A similar dependence was implied in the decrees of the senate, which, in every reign, defined the titles and powers of an elective magistrate. But it was not before the ideas, and even the language, of the Romans had been corrupted, that a *royal law*,[†] and an irrevocable gift of the people, were created by the fancy of Ulpian, or

* The constitutional style of *Legibus Solutus* is misinterpreted by the never ignorant of Dion Cassius, *com. l. i. l. iii. p. 713*. On this occasion his editor, Holmii, joins the universal censure which freedom and criticism have pronounced against that selfish historian.

† The word (*Lex Regia*) was still more recent than the *diem*. The slaves of Commodus or Caracalla would have started at the name of *royalty*.

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Continued

Their legis-
lative
powers.

more probably of Tribonian himself: and the origin of imperial power, though false in fact, and slavish in its consequence, was supported on a principle of freedom and justice. "The pleasure of the emperor has the vigour and effect of law, since the Roman people, by the royal law, have transferred to their prince the full extent of their own power and sovereignty." The will of a single man, of a child perhaps, was allowed to prevail over the wisdom of ages and the inclinations of millions; and the degenerate Greeks were proud to declare, that in his hands alone the arbitrary exercise of legislation could be safely deposited. "What interest or passion," exclaims Theophilus in the court of Justinian, "can reach the calm and sublime elevation of the monarch? he is already master of the lives and fortunes of his subjects; and those who have incurred his displeasure, are already numbered with the dead." Disdaining the language of flattery, the historian may confess, that in questions of private jurisprudence, the absolute sovereign of a great empire can seldom be influenced by any per-

* See Grævina, (Opp. p. 501-512), and Banquet, (*Republique Romaine*, tom. 1, p. 255-274). He has made a proper use of two dissertations by John Frederick Gronovius and Noodt, both translated with valuable notes; by Barbeyrac, 2 vols. in 12mo, 1731.

* Institut. l. 1, tit. II, N^o. 6. Pandect. l. 1, tit. IV, leg. 1. Cod. Justinian. l. 1. tit. XVII, leg. 1, N^o. 7. In his *Antiquities and Elements*, Hæmserius has simply treated *de constitutionibus principum*, which are illustrated by Godefroy, (*Comment. ad Cod. Theodos. l. 1, tit. l. II, III*), and Grævina, pp. 87-90.

* Theophilus, in *Paraphras. Græc. Institut.* p. 33, 34, edit. Reitz. For his person, time, writings, see the Theophilus of J. H. Stylus, *Æcern. III*, p. 1034-1073.

sonal considerations. Virtue, or even reason, will suggest to his impartial mind, that he is the guardian of peace and equity, and that the interest of society is inseparably connected with his own. Under the weakest and most vicious reign, the seat of justice was filled by the wisdom and integrity of Papinian and Ulpian;* and the purest materials of the code and pandects are inscribed with the names of Caracalla and his ministers.† The tyrant of Rome was sometimes the benefactor of the provinces. A dagger terminated the crimes of Domitian; but the prudence of Nerva confirmed his acts, which, in the joy of their deliverance, had been rescinded by an indignant senate.‡ Yet in the *rescripts*,§ replies to the consultations of the magistrates, the wisest of princes might be deceived by a partial exposition of the case. And this abuse, which placed their hasty decisions on the same level with mature and deliberate acts of legislation, was ineffectually condemned by the sense and example of Trajan.

Their
rescripts.

* There is more envy than reason in the complaint of Macrinus, (Jul. Capitolin. c. 12).—*Sed etiam leges videri Commodi et Caracallæ et hominum imperitiam voluntatem.* Commodus was really a Divus by Severus, (Dionys. Hist. Eccl. viii. p. 324, 325). Yet he occurs only twice in the pandects.

† Of Antoninus Caracalla alone 950 constitutions are extant in the Code, and with his father 180. These two princes are quoted fifty times in the pandects and eight in the institutes. (Termonian, p. 253.)

‡ Pline. *Second. Epistol.* x. 66. *Sueton. in Domitian.* c. 23.

§ It was a maxim of Constantine, *contra hæc rescripta non valent*, (Cod. Theod. l. i. tit. ii. leg. 1). The emperor reluctantly allowed some writing into the law and the fact, some delay, petition. Ac. : but these insufficient remedies are too much in the discretion and at the peril of the judge.

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The *rescripts* of the emperor, his *grants* and *decrees*, his *edicts* and *pragmatic sanctions*, were subscribed in purple ink,* and transmitted to the provinces as general or special laws, which the magistrates were bound to execute, and the people to obey. But as their number continually multiplied, the rule of obedience became each day more doubtful and obscure, till the will of the sovereign was fixed and ascertained in the Gregorian, the Hermogenian, and the Theodosian codes. The two first, of which some fragments have escaped, were framed by two private lawyers, to preserve the constitutions of the pagan emperors from Hadrian to Constantine. The third, which is still extant, was digested in sixteen books by the order of the younger Theodosius, to consecrate the laws of the Christian princes from Constantine to his own reign. But the three codes obtained an equal authority in the tribunals; and any act which was not included in the sacred deposit, might be disregarded by the judge as spurious or obsolete.^b

Forms of
the Roman
law.

Among savage nations, the want of letters is imperfectly supplied by the use of visible signs, which awaken attention, and perpetuate the remembrance of any public or private transaction.

* A compound of vermilion and cinabar, which marks the imperial diplomas from Leo I (A. D. 450) to the fall of the Greek empire, (*Bibliothèque Raisonnée de la Diplomatique*, tom. i, p. 566. M. de Lamoignon, *de Remissionibus Synodalium*, tom. ii, p. 120—121).

^b Schilling, *Jurisprudentia Ante-Justiniana*, pp. 651. 718. Cujas assigned to Gregory the reign from Hadrian to Gallienus, and the continuation to his fellow-labourer Hermogenes. This general division may be just; but they often trespassed on each other's ground.

The jurisprudence of the first Romans exhibited the scenes of a pantomime; the words were adapted to the gestures, and the slightest error or neglect in the *forms* of proceeding was sufficient to annul the *substance* of the fairest claim. The communion of the marriage-life was denoted by the necessary elements of fire and water:^a and the divorced wife resigned the bunch of keys, by the delivery of which, she had been invested with the government of the family. The manumission of a son, or a slave, was performed by turning him round with a gentle blow on the cheek: a work was prohibited by the casting of a stone; prescription was interrupted by the breaking of a branch; the clenched fist was the symbol of a pledge or deposit; the right hand was the gift of faith and confidence. The indenture of covenants was a broken straw; weights and scales were introduced into every payment, and the heir who accepted a testament, was sometimes obliged to snap his fingers, to cast away his garments, and to leap and dance with real or affected transport.^b If a citizen pursued any stolen goods into a neighbour's house, he concealed his nakedness with a linen towel, and hid his face with a mask or

^a Scaevola, most probably Q. Cæcilius Scaevola the master of Papinian, considers this acceptance of fire and water as the essence of marriage, (Pandect. l. xix, tit. 1, leg. 64. See Heineccius, Hist. J. R. N° 317).

^b Cuiuslibet Officii, tit. 12, may state an ideal case, but Dr. Antonius Ole Officii, tit. 2, appeals to the practice of his own times, which he understood as a lawyer and a magistrate, (Schelling ad Ulpian. Fragment. tit. xii, N° 34, p. 543, 544).

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.....

bason, lest he should encounter the eyes of a virgin or a matron.* In a civil action, the plaintiff touched the ear of his witness, seized his reluctant adversary by the neck, and implored, in solemn lamentation, the aid of his fellow-citizens. The two competitors grasped each other's hand as if they stood prepared for combat before the tribunal of the pretor: he commanded them to produce the object of the dispute; they went, they returned with measured steps, and a clod of earth was cast at his feet to represent the field for which they contended. This occult science of the words and actions of law, was the inheritance of the pontiffs and patricians. Like the Chaldean astrologers, they announced to their clients the days of business and repose; these important trifles were interwoven with the religion of Numa; and, after the publication of the twelve tables, the Roman people was still enslaved by the ignorance of judicial proceedings. The treachery of some plebeian officers at length revealed the profitable mystery: in a more enlightened age, the legal actions were derided and observed; and the same antiquity which sanctified the practice, obliterated the use and meaning, of this primitive language.²

* The *furtum lance* *hincus* *conscriptum* was no longer understood in the time of the Antonines, (Aulus Gellius, xxi. 10). The Attic derivation of *Holosecundus* (Antiquitat. Rom. l. iv. tit. i. N^o. 13-14) is supported by the evidence of Aristophanes, his scholars, and Pollux.

² In his Oration for Murena, (c. 8-12), Cicero turns into ridicule the forms and mysteries of the civil law, which are represented with more candour by Aulus Gellius, (Noct. Attic. xii. 10); Gravium, (Opp. p. 286, 293, 297), and Helosecundus, (Antiquitat. l. iv. tit. vi).

A more liberal art was cultivated, however, by the sages of Rome, who, in a stricter sense, may be considered as the authors of the civil law. The alteration of the idiom and manners of the Romans, rendered the style of the twelve tables less familiar to each rising generation, and the doubtful passages were imperfectly explained by the study of legal antiquarians. To define the ambiguities, to circumscribe the latitude, to apply the principles, to extend the consequences, to reconcile the real or apparent contradictions, was a much nobler and more important task; and the province of legislation was silently invaded by the expounders of ancient statutes. Their subtle interpretations concurred with the equity of the pretor, to reform the tyranny of the darker ages: however strange or intricate the means, it was the aim of artificial jurisprudence to restore the simple dictates of nature and reason, and the skill of private citizens was usefully employed to undermine the public institutions of their country. The revolution of almost one thousand years, from the twelve tables to the reign of Justinian, may be divided into three periods almost equal in duration, and distinguished from each other by the mode of instruction and the character of the civilians.² Pride and ignorance contributed, dur-

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Exposition
of the
civil law.
1764

² The order of the civil lawyers is deduced by Pomponius, (de Origine Juris Prætorii, l. 4, tit. 15). The moderns have discussed, with learning and criticism, this branch of literary history; and among these I have chiefly been guided by Gravina (p. 41-79) and Heineccius, (Hist. J. R. N^o. 112-311). Others, more especially in his books de Ordine, de Clavis Institutionum, de Legibus, and the Clavis Ciceronis.



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XLIV.The first
period.
A. U. C.
303-546.

ing the first period, to confine within narrow limits the science of the Roman law. On the public days of market or assembly, the masters of the art were seen walking in the forum, ready to impart the needful advice to the meanest of their fellow-citizens, from whose votes, on a future occasion, they might solicit a grateful return. As their years and honours increased, they seated themselves at home on a chair or throne, to expect with patient gravity the visits of their clients, who at the dawn of day, from the town and country, began to thunder at their door. The duties of social life, and the incidents of judicial proceeding, were the ordinary subject of these consultations, and the verbal or written opinion of the *jurisconsults* was framed according to the rules of prudence and law. The youths of their own order and family were permitted to listen; their children enjoyed the benefit of more private lessons, and the Mucian race was long renowned for the hereditary knowledge of the civil law. The second period, the learned and splendid age of jurisprudence, may be extended from the birth of Cicero to the reign of Severus Alexander. A system was formed, schools were instituted, books were com-

Second
period,
A. U. C.
648-966.

posed of *Ensesti*, under the names of *Alfresca*. As a result much genuine and pleasing information. Horace often alludes to the mounting labours of the civilians, (*Serm.* I, l. 10; *Epist.* II, l. 103, &c.)

Agricolam laudat jura legumque peritus
Sed gaudi cunctum, cancellor ante oculos posuit.

Homine dulcis dicitur et solenne, revinct
Mant dicens vigilare, citans promissa jura.

posed, and both the living and the dead became subservient to the instruction of the student. The *tripartite* of *Ælius Papius*, surnamed *Catus*, or the *Cunning*, was preserved as the oldest work of jurisprudence. *Cato* the censor derived some additional fame from his legal studies, and those of his son: the kindred appellation of *Mucius Scaevola* was illustrated by three sages of the law: but the perfection of the science was ascribed to *Servius Sulpicius* their disciple, and the friend of *Tully*; and the long succession, which shone with equal lustre under the republic and under the *Cæsars*, is finally closed by the respectable characters of *Papinian*, of *Paul*, and of *Ulpian*. Their names, and the various titles of their productions, have been minutely preserved, and the example of *Laheo* may suggest some idea of their diligence and fecundity. That eminent lawyer of the *Augustan* age, divided the year between the city and country, between business and composition; and four hundred books are enumerated as the fruit of his retirement. Of the collections of his rival *Capito*, the two hundred and fifty-ninth book is expressly quoted; and few teachers could deliver their opinions in less than a century of volumes. In the third period, between the reigns of *Alexander* and *Justinian*, the oracles of jurisprudence were almost mute. The measure of curiosity had been filled: the throne was occupied by tyrants and barbarians; the active spirits were diverted by religious disputes, and the professors of *Rome*, *Constantinople*, and *Berytus*, were humbly content to repeat the lessons of their more enlight-

Third period.
A. D. C.
988, 1250.

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ened predecessors. From the slow advances and rapid decay of these legal studies, it may be inferred, that they require a state of peace and refinement. From the multitude of voluminous civilians who fill the intermediate space, it is evident, that such studies may be pursued, and such works may be performed, with a common share of judgment, experience, and industry. The genius of Cicero and Virgil was more sensibly felt, as each revolving age had been found incapable of producing a similar or a second: but the most eminent teachers of the law were assured of leaving disciples equal or superior to themselves in merit and reputation.

Their philosophy.

The jurisprudence which had been grossly adapted to the wants of the first Romans, was polished and improved in the seventh century of the city, by the alliance of Grecian philosophy. The Scævolas had been taught by use and experience; but Servius Sulpicius was the first civilian who established his art on a certain and general theory.\* For the discernment of truth and falsehood, he applied, as an infallible rule, the logic of Aristotle and the stoics, reduced particular cases to general principles, and diffused over the shapeless mass, the light of order and eloquence. Cicero, his contemporary and friend, declined the reputation of a professed lawyer; but the jurisprudence of his

\* Cicero, or rather Cicero himself, proposes the *Oratore*, l. 41, 42, an idea of the art or science of jurisprudence, which the eloquent, but illiterate, Attianus II, 48, affects to deride. It was partly executed by Servius Sulpicius, (see *Brutus*, c. 41), whose praises are elegantly eulogized in the classic Latinity of the Roman Græcins, (p. 60).

country was adorned by his incomparable genius, which converts into gold every object that it touches. After the example of Plato, he composed a republic; and, for the use of his republic, a treatise of laws; in which he labours to deduce, from a celestial origin, the wisdom and justice of the Roman constitution. The whole universe, according to his sublime hypothesis, forms one immense commonwealth: gods and men, who participate of the same essence, are members of the same community; reason prescribes the law of nature and nations; and all positive institutions, however modified by accident or custom, are drawn from the rule of right, which the Deity has inscribed on every virtuous mind. From these philosophical mysteries, he mildly excludes the sceptics who refuse to believe, and the epicureans who are unwilling to act. The latter disdain the care of the republic; he advises them to slumber in their shady gardens. But he humbly entreats that the new academy would be silent, since her bold objections would too soon destroy the fair and well-ordered structure of his lofty system. Plato, Aristotle, and Zeno, he represents as the only teachers who arm and instruct a citizen for the duties of social life. Of these, the armour of the

*Perurbatissimum autem quantum harum rerum confusio, hinc ab Arcesila et Carneade reventum, videremus ut videret, turbi si invenirent in hunc, qui actis suis instructa et composita videretur, nihil edidit rudius, quam quidem ego videri cupis, subversum non audis, (the *Legibus*, l. 13). From this passage about Bentley (*Remarks on Pre-thinking*, p. 14) might have learned how finely Cicero believed in the specious doctrines which he had adored.*



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A.D. 1794.

stoics<sup>1</sup> was found to be of the firmest temper; and it was chiefly worn, both for use and ornament, in the schools of jurisprudence. From the portico, the Roman civilians learned to live, to reason, and to die: but they imbibed in some degree the prejudices of the sect; the love of paradox, the pertinacious habits of dispute, and a minute attachment to words and verbal distinctions. The superiority of *form* to *matter*, was introduced to ascertain the right to property: and the equality of crimes is countenanced by an opinion of Trebatius,<sup>2</sup> that he who touches the ear, touches the whole body; and that he who steals from an heap of corn, or an hoghead of wine, is guilty of the entire theft.<sup>3</sup>

Authority.

Arms, eloquence, and the study of the civil law, promoted a citizen to the honour of the Roman state; and the three professions were sometimes more conspicuous by their union in the same character. In the composition of the edict, a learned pretor gave a sanction and preference to his private sentiments: the opinion of a censor, or a consul, was entertained with respect; and a doubtful interpretation of the laws might be sup-

<sup>1</sup> The stoic philosophy was first taught at Rome by Panaetius, the friend of the younger Scipio, (see his life in the *Mém. de l'Académie des Inscriptions*, tom. x. p. 74-89).

<sup>2</sup> As he is quoted by Ulpian, *Ulpian. Orig.* 40, ad Sabinum in *Pandect. l. xlviii. tit. ii. leg. 41*. Yet Trebatius, after he was a leading civilian, and familiarly sought, became an epicurean, (Cicero ad Fam. vii. 2). Perhaps he was not constant or sincere in his new sect.

<sup>3</sup> See Grotius, (p. 55-51), and the ineffectual caveat of Mascov. Heinecius (*Hist. J. R.* 88. 123) quotes and opposes a dissertation of Everard Osio, de *Stoica Jurisconsultorum Philosophia*.

ported by the virtues or triumphs of the civilian. The patrician arts were long protected by the veil of mystery; and in more enlightened times, the freedom of inquiry established the general principles of jurisprudence. Subtle and intricate cases were elucidated by the disputes of the forum: rules, axioms, and definitions,\* were admitted as the genuine dictates of reason; and the consent of the legal professors was interwoven into the practice of the tribunals. But these interpreters could neither enact nor execute the laws of the republic; and the judges might disregard the authority of the Scaevolæ themselves, which was often overthrown by the eloquence or sophistry of an ingenious pleader.† Augustus and Tiberius were the first to adopt, as an useful engine, the science of the civilians; and their servile labours accommodated the old system to the spirit and views of despotism. Under the fair pretence of securing the dignity of the art, the privilege of subscribing legal and valid opinions was confined to the sages of senatorian or equestrian rank, who had been previously approved by the judgment of the prince; and this monopoly prevailed, till Hadrian restored the freedom of the profession to every citizen conscious of his abilities and knowledge. The discretion of the pretor was now governed by the lessons of his teachers; the judges were enjoined to obey the comment as well as the text

\* We have heard of the *Cassianæ* rule, the *Aquilian* stipulation, and the *Maxillian* formula; of 211 maxims, and of 247 definitions, (Panderp. l. 1, tit. xxi, xxv).

† Read Cicero, l. 1, de Oratore, Topics, pro Murena.

CHAP. of the law : and the use of codicils was a memor-  
 XLIV. able innovation, which Augustus ratified by the  
 advice of the civilians.<sup>9</sup>

Secia.

The most absolute mandate could only require that the judges should agree with the civilians, if the civilians agreed among themselves. But positive institutions are often the result of custom and prejudice; laws and language are ambiguous and arbitrary; where reason is incapable of pronouncing, the love of argument is inflamed by the envy of rivals, the vanity of masters, the blind attachment of their disciples; and the Roman jurisprudence was divided by the once famous sects of the *Proculians* and *Sabinians*.<sup>10</sup> Two sages of the law, Ateius Capito and Antistius Labeo,<sup>11</sup> adorned the peace of the Augustan age; the former distinguished by the favour of his sovereign; the latter more illustrious by his contempt of that favour, and his stern though harmless opposition to the tyrant of Rome. Their legal studies were influenced

<sup>9</sup> See Pomponius, (*de Origin Juris Prædict.* l. i, tit. ii, leg. 2, N<sup>o</sup> 47); Heineccius, (*ind. Institut.* l. i, tit. ii, N<sup>o</sup> 8, l. ii, tit. xxv, in *Element. et Antiquitat.*), and Gravina, (p. 41-45). Yet the monopoly of Augustus, an harsh measure, would appear with some reason in the contemporary evidence; and it was probably vetted by a decree of the senate.

<sup>10</sup> I have perused the *Diatriba* of Godefroid Macquius, the learned Macon, *de Sectis Jurisconsultorum*, (Lipsiæ, 1778, in 12mo, p. 276), a learned treatise on a narrow and barren ground.

<sup>11</sup> See the character of Antistius Labeo in Tacitus, (*Annal.* iii, 75), and in an epistle of Ateius Capito, (*Aul. Gallus*, xiii, 12), who accuses his rival of *inertis animi et tenuis*. Yet Heineccius would not have lacked a virtuous and respectable scholar; and I must adopt the estimation of Bentley, who reads *Labeus magnus*, (*Seren.* l. vi, 92). See Macquius, *de Sectis*, in l. i, p. 1-26.

by the various colours of their temper and principles. Labeo was attached to the form of the old republic: his rival embraced the more probable substance of the rising monarchy. But the disposition of a courtier is tame and submissive; and Capito seldom presumed to deviate from the sentiments, or at least from the words, of his predecessors: while the bold republican pursued his independent ideas without fear of paradox or innovations. The freedom of Labeo was enslaved, however, by the rigour of his own conclusions, and he decided according to the letter of the law, the same questions which his indulgent competitor resolved with a latitude of equity more suitable to the common sense and feelings of mankind. If a fair exchange had been substituted to the payment of money, Capito still considered the transaction as a legal sale;\* and he consulted nature for the age of puberty, without confining his definition to the precise period of twelve or fourteen years.† This opposition of sentiments was propagated in the writings and lessons of the two founders; the

\* Justinian (*Institut.* l. iii, tit. xiii, and *Theophil.* *Verb. Gen.* p. 677, 680) has commemorated this weighty dispute, and the verses of Homer that were alleged on either side as legal authorities. It was decided by Paul, (*leg.* 33, ad *Edict.* in *Procurat.* l. xiii, tit. 1, *leg.* 1), slave, in a simple exchange, the buyer could not be disenthralled from the seller.

† This controversy was likewise given for the *Procurator*, to supersede the indecency of a search, and to comply with the opinion of Hypocritas, who was attached to the septenary number of two weeks of years, or 100 of days, (*Institut.* l. i, tit. xiii). *Pamarch* and the *staire* (de *Placid.* *Philosoph.* l. v, c. 34) assign a more rational reason. Fourteen years is the age—*εἰς τὴν ἡλικίαν ἀφαιρῶντος αὐτοῦ*. See the *maxima* of the sects in *Matteo*, v. 12. p. 145-174.

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schools of Capito and Labeo maintained their inveterate conflict from the age of Augustus to that of Hadrian;\* and the two sects derived their appellations from Sabinus and Proculus, their most celebrated teachers. The names of *Cassians* and *Pegasians* were likewise applied to the same parties; but, by a strange reverse, the popular cause was in the hands of Pegasus,† a timid slave of Domitian, while the favourite of the Caesars was represented by Cassius,‡ who gloried in his descent from the patriot assassin. By the perpetual edict, the controversies of the sects were in a great measure determined. For that important work, the emperor Hadrian preferred the chief of the Sabinians: the friends of monarchy prevailed; but the moderation of Salvius Julian insensibly reconciled the victors and the vanquished. Like the contemporary philosophers, the lawyers of the age of the Antonines disclaimed the authority of a master, and adopted from every system the most probable doctrines.§ But their writings would have been less

\* The series and conclusion of the sects are described by Mascoe, *de. h. u. l.*, p. 11-120, and it would be almost ridiculous to praise his equal justice to these obsolete sects.

† At the last anniversary he flew to the turbot council; yet Juvenal (*Sat. iv.*, 75-81) styles the prefect or *heif* of Rome sanctimonious *legum lili, pro.* From his science, says the old scholiast, he was called, not a king, but a hook. He derived the singular name of Pegasus from the galley which his father commanded.

‡ Tacit. *Annal.* xvi. l. 1. Sueton. in *Nerone*, c. xxvii.

§ Mascoe, *de. Sectis*, c. viii, p. 120-144, *de. Hæreticis*, a legal term which was applied to those seditious lawyers: *Amisores* is synonymous to *dividers*.



luminous, had their choice been more unanimous. The conscience of the judge was perplexed by the number and weight of discordant testimonies, and every sentence that his passion or interest might pronounce, was justified by the sanction of some venerable name. An indulgent edict of the younger Theodosius excused him from the labour of comparing and weighing their arguments. Five civilians, Calus, Papinian, Paul, Ulpian, and Modestianus, were established as the oracles of jurisprudence: a majority was decisive; but if their opinions were equally divided, a casting vote was ascribed to the superior wisdom of Papinian.\*

When Justinian ascended the throne, the reformation of the Roman jurisprudence was an arduous but indispensable task. In the space of ten centuries, the infinite variety of laws and legal opinions had filled many thousand volumes, which no fortune could purchase and no capacity could digest. Books could not easily be found; and the judges, poor in the midst of riches, were reduced to the exercise of their illiterate discretion. The subjects of the Greek provinces were ignorant of the language that disposed of their lives and properties; and the barbarous dialect of the Latins was imperfectly studied in the academies of Berytus and Constantinople. As an Illyrian soldier, that idiom was

Reformation of the Roman law by Justinian, A. D. 527, &c.

\* See the Theodosian Code, l. 1, tit. vi, with Godfrey's Commentary, tom. 1, p. 38-35. This decree might give occasion to judicial disputes like those in the Lateran Synodals, whether a judge was obliged to follow the opinion of Papinian, or of a majority, against his judgment, against his conscience, &c. Yet a legislator might give that opinion, however false, the validity, not of truth, but of law.



familiar to the infancy of Justinian; his youth had been instructed by the lessons of jurisprudence, and his imperial choice selected the most learned civilians of the East, to labour with their sovereign in the work of reformation.<sup>3</sup> The theory of professors was assisted by the practice of advocates, and the experience of magistrates; and the whole undertaking was animated by the spirit of Tribunian.<sup>4</sup> This extraordinary man, the object of so much praise and censure, was a native of Side in Pamphylia; and his genius, like that of Bacon, embraced, as his own, all the business and knowledge of the age. Tribunian composed, both in prose and verse, on a strange diversity of curious and abstruse subjects:<sup>5</sup> a double panegyric of Justinian and the life of the philosopher Theodorus; the nature of happiness and the duties of government; Homer's catalogue and the four-and-twenty sorts of metre; the astronomical canon of Pto-

*Thompson*,  
v. 19, 587-  
590.

\* For the best edition of Justinian, I have studied the preface to the Institutes (the Text, 22, and 23) Preface to the Pandects (the Text, 22, Preface to the Code, and the Code itself, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918

\* For the characters of Trilobian, see the distinctions of Procopius, (Præf. l. i., p. 21, 22). Accord, c. 12, 20; and Suidas, (tom. III, p. 261, col. 1, under Κινέρε). Under the Var. Scythian, p. 173-207, under Σαυτ, very hard, &c. white-mouth—the black dentures.

<sup>2</sup> I apply the two measures of Sulloway to the same cases, with corresponding results, as follows. Yet the lawyers appear against it, and *Williams* is inclined to separate the two characters. (CHURCH, *Commentary*, p. 343; *ib.*, p. 318; *ib.*, p. 418; *ib.*, p. 386; *ib.*, 473.)

lens; the changes of the months; the houses of the planets; and the harmonic system of the world. To the literature of Greece he added the use of the Latin tongue; the Roman civilians were deposited in his library and in his mind; and he most assiduously cultivated those arts which opened the road of wealth and preferment. From the bar of the pretorian prefects, he raised himself to the honours of questor, of consul, and of master of the offices: the council of Justinian listened to his eloquence and wisdom, and envy was mitigated by the gentleness and affability of his manners. The reproaches of impiety and avarice have stained the virtues or the reputation of Tribonian. In a bigotted and persecuting court, the principal minister was accused of a secret aversion to the Christian faith, and was supposed to entertain the sentiments of an atheist and a pagan, which have been imputed, inconsistently enough, to the last philosophers of Greece. His avarice was more clearly proved and more sensibly felt. If he were swayed by gifts in the administration of justice, the example of Bacon will again occur; nor can the merit of Tribonian atone for his baseness, if he degraded the sanctity of his profession; and if laws were every day enacted, modified, or repealed, for the base consideration of his private emolument. In the sedition of Constantinople, his removal was granted to the clamours, perhaps to the just indignation, of the people; but the questor was speedily restored, and till the hour of his death, he possessed, above twenty years, the favour and confidence of the

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emperor. His passive and dutiful submission has been honoured with the praise of Justinian himself, whose vanity was incapable of discerning how often that submission degenerated into the grossest adulation. Tribonian adored the virtues of his gracious master: the earth was unworthy of such a prince: and he affected a pious fear, that Justinian, like Elijah or Romulus, would be snatched into the air, and translated alive to the mansions of celestial glory.\*

The code  
of Justinian.  
A. D. 528,  
Feb. 15;  
A. D. 529,  
April 7.

If Cæsar had achieved the reformation of the Roman law, his creative genius, enlightened by reflection and study, would have given to the world a pure and original system of jurisprudence. Whatever flattery might suggest, the emperor of the East was afraid to establish his private judgment as the standard of equity: in the possession of legislative power, he borrowed the aid of time and opinion: and his laborious compilations are guarded by the sages and legislators of past times. Instead of a statue cast in a simple mould by the hand of an artist, the works of Justinian represent a tessellated pavement of antique and costly, but too often of incoherent, fragments. In the first year of his

\* This story is related by Herythius, *de Viris Illustrissimis* Procopius, (*Anecdota*, c. 12), and Suidas, (*tom. li. p. 501*). Such flattery is incredible!

— *Nihil est quod credas de re*

*Nec potest, cum laudatur Dilectus equis potestas.*

Festouelle (*tom. i. p. 33-39*) has ridiculed the impudence of the modest Virgil. But the same Festouelle places his king above the divine Augustus; and the sage Boileau has not blushed to say, — “*Le dieux à ses yeux n’oseroient balancer.*” Yet neither Augustus nor Trajan XIV were fools.

reign, he directed the faithful Tribonian, and nine learned associates, to revise the ordinances of his predecessors, as they were contained, since the time of Hadrian, in the Gregorian, Hermogenian, and Theodosian codes; to purge the errors and contradictions, to retrench whatever was obsolete or superfluous, and to select the wise and salutary laws best adapted to the practice of the tribunals and the use of his subjects. The work was accomplished in fourteen months; and the twelve books or *tables*, which the new decemvirs produced, might be designed to imitate the labours of their Roman predecessors. The new code of Justinian was honoured with his name, and confirmed by his royal signature: authentic transcripts were multiplied by the pens of notaries and scribes; they were transmitted to the magistrates of the European, the Asiatic, and afterwards the African provinces: and the law of the empire was proclaimed on solemn festivals at the doors of churches. A more arduous operation was still behind: to extract the spirit of jurisprudence from the decisions and conjectures, the questions and disputes, of the Roman civilians. Seventeen lawyers, with Tribonian at their head, were appointed by the emperor to exercise an absolute jurisdiction over the works of their predecessors. If they had obeyed his commands in ten years, Justinian would have been satisfied with their diligence; and the rapid composition of the *DIGEST* or *PANDECTÆ*,<sup>\*</sup> in three

The pen-  
deers or  
digest,  
A. D. 529,  
Dec. 15;  
A. D. 529,  
Dec. 16.

\* The *Hadrianus* (general revisers) was a common title of the Greek miscellaneous, (Plin. *Præfat. ad Hist. Natur.*). The *Digest* of Savaria, *Manuelius*.

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years, will deserve praise or censure, according to the merit of the execution. From the library of Trifolionian, they chose forty, the most eminent civilians of former times:<sup>2</sup> two thousand treatises were comprised in an abridgment of fifty books; and it has been carefully recorded, that three millions of lines or sentences,<sup>3</sup> were reduced, in this abstract, to the moderate number of one hundred and fifty thousand. The edition of this great work was delayed a month after that of the *INSTITUTES*; and it seemed reasonable that the elements should precede the digest of the Roman law. As soon as the emperor had approved their labours, he ratified, by his legislative power, the speculations of these private citizens: their commentaries on the twelve tables, the perpetual edict, the laws of the people, and the decrees of the senate, succeeded to the authority of the text; and

*Marcellinus, Colum.* were already familiar to the civilians; but *Ulpian* was in the wrong when he used the two appellations as synonymous. In the word *Pandectæ* Greek or Latin—*πανδηκτικæ* or *familiaris*. The diligent *Byzantine* will not presume to settle these miscellaneous controversies, (*Hist. Pandect. Florentinæ*, p. 300-304).

<sup>2</sup> *Augustus Palladius* (c. 1, Epist. viii) reckons thirty-seven (p. 191-200) civilians quoted in the *Pandectæ*—a less number, for the work, as an extraordinary law. The Greek index to the *Pandectæ* enumerates thirty-seven; and thirty are produced by the *Index* of the *Epitome*. (*Ulpian, Index*, tom. II, p. 109-147). *Antoninus Augustus* and *Sextus Pompeius* prepared *Pandectæ*, and *Ulpian*, p. 180, is said to have added fifty-four names; but they must be taken as accidental in number.

<sup>3</sup> The *Digest* of the *Enchiridion* may be strictly reckoned as sentences or periods of a complete sense, which, on the breadth of the parchment rolls or volumes, composed as many lines of various length. The number of *Tracts* in each book served as a check on the error of the number. (*Henseling*, p. 211-212, and his original author *Schurz*, *Stavens, Pandect. et. tom. 1, p. 1921-1924*).



the text was abandoned, as an useless, though venerable, relic of antiquity. The *Code*, the *Pandects*, and the *Institutes*, were declared to be the legitimate system of civil jurisprudence; they alone were admitted in the tribunals, and they alone were taught in the academies of Rome, Constantinople, and Berytus. Justinian addressed to the senate and provinces, his *eternal oracles*; and his pride, under the mask of piety, ascribed the consummation of this great design to the support and inspiration of the Deity.

Since the emperor declined the fame and envy of original composition, we can only require at his hands, method, choice, and fidelity, the humble, though indispensable, virtues of a compiler. Among the various combinations of ideas, it is difficult to assign any reasonable preference; but as the order of Justinian is different in his three works, it is possible that all may be wrong; and it is certain that two cannot be right. In the selection of ancient laws, he seems to have viewed his predecessors without jealousy, and with equal regard: the series could not ascend above the reign of Hadrian, and the narrow distinction of paganism and Christianity, introduced by the superstition of Theodosius, had been abolished by the consent of mankind. But the jurisprudence of the pandects is circumscribed within a period of an hundred years, from the perpetual edict to the death of Severus Alexander; the civilians who lived under the first *Cæsars*, are seldom permitted to speak, and only three names can be attributed to the age of the

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Praise and  
censure —  
the gods  
and pen-  
dents.



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republican. The favourite of Justinian (it has been severely urged) was fearful of encountering the light of freedom and the gravity of Roman ages. Tribonian condemned to oblivion the genuine and native wisdom of Cato, the Scævolas, and Sulpicius; while he invoked spirits more congenial to his own, the Syrians, Greeks, and Africans, who flocked to the imperial court to study Latin as a foreign tongue, and jurisprudence as a lucrative profession. But the ministers of Justinian<sup>1</sup> were instructed to labour, not for the curiosity of antiquarians, but for the immediate benefit of his subjects. It was their duty to select the useful and practical parts of the Roman law; and the writings of the old republicans, however curious or excellent, were no longer suited to the new system of manners, religion, and government. Perhaps, if the preceptors and friends of Cicero were still alive, our candour would acknowledge, that, except in purity of language,<sup>2</sup> their intrinsic merit was excelled by the school of Papinian and Ulpian. The science of the laws is the slow growth of time and experience, and the advantage both of method and ma-

<sup>1</sup> An ingenious and learned edition of Schaffingius (*Justipendia Acta Justiniani*, p. 882-907) justifies the choice of Tribonian, against the passionate charges of Francis Heumann and his sectaries.

<sup>2</sup> Strip away the crust of Tribonian, and allow for the use of technical words, and the Latin of the *prodoms* will be found not unworthy of the silver age. It has been vehemently attacked by Laurentius Valla, a fastidious grammarian of the 15th century, and by his epigoni Florinus Bahman. It has been defended by Alciat and a numerous advocate, (most probably Læmus Capellinus). Their various treatises are collected by Duker. (*Oppuscula de Latinitate veterum Jurisconsultorum*, Lugd. Bat. 1713, in 12mo.)

terials, is naturally assumed by the most recent authors. The civilians of the reign of the Antonines had studied the works of their predecessors; their philosophic spirit had mitigated the rigour of antiquity, simplified the forms of proceeding, and emerged from the jealousy and prejudice of the rival sects. The choice of the authorities that compose the pandects, depended on the judgment of Tribonian: but the power of his sovereign could not absolve him from the sacred obligations of truth and fidelity. As the legislator of the empire, Justinian might repeal the acts of the Antonines, or condemn, as seditious, the free principles, which were maintained by the last of the *Roman* lawyers.<sup>1</sup> But the existence of past facts is placed beyond the reach of despotism; and the emperor was guilty of fraud and forgery, when he corrupted the integrity of their text, inscribed with their venerable names the words and ideas of his servile reign,<sup>2</sup> and suppressed, by the hand of power, the pure and authentic copies of their sentiments. The changes and interpolations of Tribonian and his colleagues are excused by the pretence of uniformity; but their cares have been insufficient,

<sup>1</sup> *Nomina eadem veteribus servata sunt, legum solius vestigia nostrum fecimus. Iurque quid erat in illis condidimus, multa autem talia sunt reposita, hinc doctrinae secreti delictum, et in perpetuum summi doloris est quaque lex, (Cod. Justinian. l. i, tit. xvi, leg. 3. N. 10). A frank confession!*

<sup>2</sup> The number of these condemnations, to police name for forgotten is much reduced by Bynkershoek, &c. the is last books of his observations, who partly maintains the right of Justinian, and the duty of Tribonian.



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Loss of the  
ancient  
jurispru-  
dence

and the *antinomies*, or contradictions of the code and pandects, still exercise the patience and subtlety of modern civilians.\*

A rumour devoid of evidence has been propagated by the enemies of Justinian; that the jurisprudence of ancient Rome was reduced to ashes by the author of the pandects, from the vain persuasion, that it was now either false or superfluous. Without usurping an office so inviolable, the emperor might safely commit to ignorance and time the accomplishment of this destructive wish. Before the invention of printing and paper, the labour and the materials of writing could be purchased only by the rich; and it may reasonably be computed, that the price of books was an hundred fold their present value.† Copies were slowly multiplied and cautiously renewed: the hopes of profit tempted the sacrilegious scribes to craze the characters of antiquity, and Sophocles or Tacitus were obliged to resign the parchment to missals, homilies, and the golden legend.‡ If such was

\* The *antinomies*, or opposite laws of the code and pandects, are sometimes the cause, and often the excuse, of the glorious uncertainty of the civil law, which we often observe when Montesquieu calls it "Quasi non juris Causa." See a fine passage of Frontonius Beldandus de Justiniano, O. H. p. 259. An. apud Lindewig. p. 304, 305.

† When Froto, or Fronton, sold at Paris his first printed books as manuscripts, the price of a parchment copy was reduced from ten or five hundred to sixty, fifty, and forty crowns. The public was at first pleased with the cheapness, and at length provoked by the discovery of the fraud. *Mémoires, Annales Typographiques*, tom. 1, p. 114 first edition.

‡ This venerable practice prevailed from the sixth, and more especially from the sixth, century, when it became almost universal. (Montesquieu, in the *Mémoires de l'Académie*, tom. vi, p. 200, &c. *Bibliothèque Raisonnée de la Diplomatique*, tom. 1, p. 116).

the fate of the most beautiful compositions of genius, what stability could be expected for the dull and barren works of an obsolete science? The books of jurisprudence were interesting to few, and entertaining to none: their value was connected with present use, and they sunk for ever as soon as that use was superseded by the innovations of fashion, superior merit, or public authority. In the age of peace and learning, between Cicero and the last of the Antonines, many losses had been already sustained, and some luminaries of the school, or forum, were known only to the curious by tradition and report. Three hundred and sixty years of disorder and decay accelerated the progress of oblivion; and it may fairly be presumed, that of the writings, which Justinian is accused of neglecting, many were no longer to be found in the libraries of the East.\* The copies of Papinian or Ulpian, which the reformer had proscribed, were deemed unworthy of future notice: the twelve tables and pretorian edict insensibly vanished, and the monuments of ancient

\* Pomponius (Presert, l. i. tit. ii. leg. 2) observes, that of the three founders of the civil law, Marcius, Brutus, and Manilius, extant volumina, scripta Manlii monumentum; that of some old expeditious lawyers, *hinc verbatim verbum descripta inter artium hominum*. Eight of the Augustan aęge were reduced to a compendium: of Cassiodorus, scripta non extant, sed magis libris, &c.: of Trebatius, *saltem frequentior*: of Volcanus libet perire grati erat. Many quotations in the posthumous are derived from books which Trebatius never saw; and, in the long period from the sixth to the sixth century of Rome, the progress of the moderns successively depends on the knowledge and severity of their predecessors.

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Rome were neglected or destroyed by the envy and ignorance of the Greeks. Even the pandects themselves have escaped with difficulty and danger from the common shipwreck, and criticism has pronounced, that *all* the editions and manuscripts of the West are derived from *one* original.\* It was transcribed at Constantinople in the beginning of the seventh century,<sup>†</sup> was successively transported by the accidents of war and commerce to Amalphi,<sup>‡</sup> Pisa,<sup>§</sup> and Florence;<sup>||</sup> and is now

\* All, in several instances, repeat the errors of the scribe and the transpositions of some leaves in the Florentine pandects. This fact, if it be true, is decisive. Yet the pandects are quoted by Leo of Chios, (who died in 1117); by Theobald, archbishop of Caesariensis, and by Vinnius, our first professor, in the year 1140, (Schæfer ad Petrii, v. 7, tom. ii, p. 1080-1081). Have our British MSS. of the pandects been collated?

† See the description of this original in Breuchman, *Offic. Pandect. Florent.* l. i. c. 2, §. p. 4-17, and l. ii. Petilian, an ambassador, received it as the authentic standard of Justinian himself, (p. 407, 408); but this paradox is refuted by the abbreviations of the Florentine MS. (l. ii. c. 3, p. 117-120). It is composed of two quarto volumes with large margins, on a thin parchment, and the Latin characters betray the hand of a Greek scribe.

‡ Breuchman, at the end of his history, has inserted two dissertations on the republic of Amalphi, and the Pisan war in the year 1133, &c.

§ The discovery of the pandects at Amalphi (A. D. 1137) is first noticed (in 1301) by Ludovicus Bologninus, (Breuchman, l. i. c. 11, p. 73, 74; l. ii. c. 2, p. 317-325), on the faith of a Pisan chronicle, (p. 409, 410), without a name or a date. The whole story, though unknown to the 15th century, embellished by ignorant ages, and supported by rigid criticism, is not, however, destitute of much internal probability, (l. i. c. 4-8, p. 17-50). The *Libri Pandectarum* of Pisa was undoubtedly transmitted in the 12th century by the great Bartolomæ, (p. 406, 407). See l. i. c. 9, p. 26-37.

|| Pisa was taken by the Florentines in the year 1406; and in 1411 the pandects were transported to the capital. These events are authentic and famous.



deposited as a sacred relic<sup>7</sup> in the ancient palace of the republic.<sup>8</sup>

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Legal in-  
consistency  
of Justinian.

It is the first care of a reformer to prevent any future reformation. To maintain the text of the pandects, the institutes, and the code, the use of ciphers and abbreviations was rigorously proscribed; and as Justinian recollected, that the perpetual edict had been buried under the weight of commentators, he denounced the punishment of forgery against the rash civilians who should presume to interpret or pervert the will of their sovereign. The scholars of Accursius, of Bartolus, of Cujacius, should blush for their accumulated guilt, unless they dare to dispute his right of binding the authority of his successors, and the native freedom of the mind. But the emperor was unable to fix his own inconstancy; and, while he boasted of renewing the exchange of Diomedæ, of transmuting brass into gold,<sup>9</sup> he discovered the necessity of purifying his gold from the mixture of baser alloy.

<sup>7</sup> They were now bound in purple, deposited in a rich casket, and shown to curious travellers by the monks and ungenerous bar-bauds, and with lighted tapers. (Brockman, l. i, c. 10, 11, 12, p. 52-53.)

<sup>8</sup> After the collations of Politian, Bologninus, and Antoninus Augustinus, and the splendid edition of the pandects by Tacuinus, (in 1521), Henry Brockman, a Dutchman, undertook a pilgrimage to Florence, where he employed several years in the study of a single manuscript. His *Historia Pandectarum Florentianorum*, (Utrecht, 1722, in 4to), though a monument of industry, is a small portion of his original design.

<sup>9</sup> *Novus gelatus, israelita mactatus, apud Romanum patrem munitis circumis*, (1st Prefat. ad Pandect.). A law of Moses or Tana would surprise us in an act of parliament. *Que causa debet esse sanctum in agro urbis*. Of the first code, he says, (1st Prefat.), *in æternum valiturum*. Man and for ever?



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Second  
edition of  
the code,  
A. D. 529,  
Nov. 16.

The no-  
vels,  
A. D. 529,  
465.

Six years had not elapsed from the publication of the code, before he condemned the imperfect attempt, by a new and more accurate edition of the same work, which he enriched with two hundred of his own laws, and fifty decisions of the darkest and most intricate points of jurisprudence. Every year, or, according to Procopius, each day, of his long reign, was marked by some legal innovation. Many of his acts were rescinded by himself; many were rejected by his successors, many have been obliterated by time; but the number of sixteen *EDICTS*, and one hundred and sixty-eight *NOVELS*,<sup>b</sup> has been admitted into the authentic body of the civil jurisprudence. In the opinion of a philosopher superior to the prejudices of his profession, these incessant, and for the most part trifling, alterations, can be only explained by the venal spirit of a prince, who sold without shame his judgments and his laws.<sup>c</sup> The charge of the secret historian is indeed explicit and vehement; but the sole instance, which he produces, may be ascribed to the devotion as well as to the avarice of Justinian. A wealthy bigot had bequeathed his inheritance to the church of Emesa; and its value was enhanced by the dexterity of an artist, who subscribed confessions

<sup>a</sup> *Nucleus* is a classic adjective, but a barbarous substantive; (Lodwig, p. 245). Justinian never collected them himself; the nine codices, the legal standard of modern civilians, consist of eighty-eight novels; but the number was increased by the diligence of Julian, Harpocration, and Constantine, (Lodwig, p. 249, 258. *Almagest*. Nov. in *Anecd.* p. 98).

<sup>b</sup> Montesquieu, *Considerations sur la Grandeur et la Décadence des Romains*, c. 30, tom. iii, p. 304, in 488. On this occasion he throws aside the gown and cap of a President—Marta.

of debt and promises of payment with the names of the richest Syrians. They pleaded the established prescription of thirty or forty years; but their defence was over-ruled by a retrospective edict, which extended the claims of the church to the term of a century; an edict so pregnant with injustice and disorder, that after serving this occasional purpose, it was prudently abolished in the same reign.\* If candour will acquit the emperor himself, and transfer the corruption to his wife and favourites, the suspicion of so foul a vice must still degrade the majesty of his laws: and the advocates of Justinian may acknowledge, that such levity, whatsoever be the motive, is unworthy of a legislator and a man.

Monarchs seldom condescend to become the preceptors of their subjects; and some praise is due to Justinian, by whose command an ample system was reduced to a short and elementary treatise. Among the various institutes of the Roman law,† these of Cains‡ were the most popular in the East and West; and their use may

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The Institutes,  
A. D. 529,  
Nov. 34.

\* *Procopius, Anecdota*, c. 38. A similar privilege was granted to the church of Rome (Nov. 12). For the general repeal of these mischievous indulgences, see Nov. 101, and *Edict*, v.

† Justinian, in his Institutes of Christianity, an elegant and excellent work, proposes to imitate the title and method of the civil law. *Quidam prædictæ et archiepiscopalis Institutiones Cæsar Justinus compendiosè exhibuit*, (Hædlin, l. 1, c. 11). Such as Ulpian, Paul, Florentinus, Marcellus.

‡ The emperor Justinian calls him *caesar*, though he died before the end of the second century. His Institutes are quoted by Socrus, Sozomen, Theodoret, &c. and the Epitome by Arrian is still extant; see the *Preface* and *Notes* to the edition of Schœpping, in the *Jurisprudentia Antiquæ Justinianæ*, l. 1, c. 11; Heineccius, *Hist. J. R.* l. 1, c. 11; Lando, *op. cit.* p. 100.

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be considered as an evidence of their merit. They were selected by the imperial delegates, Tribonian, Theophilus, and Dorotheus; and the freedom and purity of the Antonines was incrustated with the coarser materials of a degenerate age. The same volume which introduced the youth of Rome, Constantinople, and Berytus, to the gradual study of the code and pandects, is still precious to the historian, the philosopher, and the magistrate. The *INSTITUTES* of Justinian are divided into four books; they proceed, with no contemptible method, from I. *Persons*, to II, *Things*, and from things, to III. *Actions*; and the article IV. of *Private Wrongs*, is terminated by the principles of *Criminal Law*.

I. OF  
PERSONS.  
Freemen  
and slaves.

I. The distinction of ranks and *persons*, is the firmest basis of a mixed and limited government. In France, the remains of liberty are kept alive by the spirit, the honours, and even the prejudices, of fifty thousand nobles.\* Two hundred families supply, in lineal descent, the second branch of the English legislature, which maintains, between the king and commons, the balance of the constitution. A gradation of patricians and plebeians, of strangers and subjects, has supported the aristocracy of Genoa, Venice, and ancient Rome. The perfect equality of men is the point in which the ex-

\* See the *Annales Politiques de l'Abbe de St. Pierre*, tom. 1, p. 25, who dates in the year 1135. The most ancient families claim the immemorial possession of arms and *hofs*. Since the crusades, arms, the most truly respectable, have been created by the king, for merit and services. The scut and surcoat is derived from the multitude of vassal officers without trust or dignity, which continually ennobles the wealthy plebeians.

trems of democracy and despotism are confounded; since the majesty of the prince or people would be offended, if any heads were exalted above the level of their fellow-slaves or fellow-citizens. In the decline of the Roman empire, the proud distinctions of the republic were gradually abolished, and the reason or instinct of Justinian completed the simple form of an absolute monarchy. The emperor could not eradicate the popular reverence which always waits on the possession of hereditary wealth, or the memory of famous ancestors. He delighted to honour with titles and emoluments, his generals, magistrates, and senators; and his precarious indulgence communicated some rays of their glory to the persons of their wives and children. But in the eye of the law, all Roman citizens were equal, and all subjects of the empire were citizens of Rome. That inestimable character was degraded to an obsolete and empty name. The voice of a Roman could no longer enact his laws, or create the annual ministers of his power; his constitutional rights might have checked the arbitrary will of a master; and the bold adventurer from Germany or Arabia was admitted, with equal favour, to the civil and military command, which the citizen alone had been once entitled to assume over the conquests of his fathers. The first Caesars had scrupulously guarded the distinction of *ingenious*, and *servile* birth, which was decided by the condition of the mother; and the candour of the laws was satisfied, if her freedom could be ascertained during a single moment between the conception and the delivery.

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The slaves, who were liberated by a generous master, immediately entered into the middle class of *libertines* or freedmen: but they could never be enfranchised from the duties of obedience and gratitude: whatever were the fruits of their industry, their patron and his family inherited the third part; or even the whole of their fortune, if they died without children and without a testament. Justinian respected the rights of patrons; but his indulgence removed the badge of disgrace from the two inferior orders of freedmen: whoever ceased to be a slave, obtained, without reserve or delay, the station of a citizen; and at length the dignity of an ingenuous birth, which nature had refused, was created, or supposed, by the omnipotence of the emperor. Whatever restraints of age, or forms, or numbers, had been formerly introduced to check the abuse of manumissions, and the too rapid increase of vile and indigent Romans, he finally abolished; and the spirit of his laws promoted the extinction of domestic servitude. Yet the eastern provinces were filled, in the time of Justinian, with multitudes of slaves, either born or purchased for the use of their masters; and the price, from ten to seventy pieces of gold, was determined by their age, their strength, and their education.\* But the hardships of this dependent

\* If the option of a slave was bequeathed to several legatees, they were lots, and the losers were entitled to their share of his value: ten pieces of gold for a common servant or maid under ten years; if above that age, twenty; if they knew a trade, thirty; musicians or writers, fifty; gold slaves or physicians, sixty; eunuchs under ten years, thirty pieces; above, fifty; if testaments, seventy. (Coul. l. vi, tit. xiii, leg. 3). These legal prices are generally below those of the market.



state were continually diminished by the influence of government and religion; and the pride of a subject was no longer elated by his absolute dominion over the life and happiness of his bondsman.<sup>1</sup>

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The law of nature instructs most animals to cherish and educate their infant progeny. The law of reason inculcates to the human species the returns of filial piety. But the exclusive, absolute, and perpetual dominion of the father over his children, is peculiar to the Roman jurisprudence,<sup>2</sup> and seems to be coeval with the foundation of the city.<sup>3</sup> The paternal power was instituted or confirmed by Romulus himself; and after the practice of three centuries, it was inscribed on the fourth table of the decemvirs. In the forum, the senate, or the camp, the adult son

Fathers  
and child-  
ren.

<sup>1</sup> For the state of slaves and freedmen, see Institutes, l. i, tit. iii. viii; l. ii, tit. i. iii. viii, (x); Pandects or Digest, l. i, tit. v. vi; l. xxviii, tit. i-iv, and the whole of the sixth book; Code, l. vi, tit. iv, v; l. vii, tit. i-xiii. Be it hereforwards understood that, with the original text of the Institutes and Pandects, the corresponding articles in the Antiquities and Elements of Heineccius are regularly quoted; and with the xxvii first books of the Pandects, the learned and rational Commentaries of Gerard Noodt, (Opera, tom. ii, p. 1-300, the end; Lond. Bat. 1724).

<sup>2</sup> See the patria potestas in the Institutes, d. i, tit. ix, the Pandects, d. i, tit. xi, viii, and the Code, d. viii, tit. xvi, xviii, xliii. *Potestas quæ in filios habetur propriam est æternam Romanorum. Nulli enim aliæ sunt homines, qui talium in liberos habent potestatem qualem nos habemus.*

<sup>3</sup> Dionysius Hal. l. ii, p. 84, 85. Græcia (Opp. p. 246) produces the words of the six tables. Papinian (in Collatione Legum Romanæ et Mosaicarum, tit. iv, p. 204) styles this, *patria potestas, lex regia Ulpianæ sed Sabinæ* l. xvi, in Pandect. l. i, tit. xi, leg. 8; says, *ius potestatis moribus receptum*; and Justinian alludes in *potestate habetis*. How sacred—or rather, how absurd!



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of a Roman citizen enjoyed the public and private rights of a person: in his father's house, he was a mere *thing*; confounded by the laws with the moveables, the cattle, and the slaves, whom the capricious master might alienate or destroy without being responsible to any earthly tribunal. The hand which bestowed the daily sustenance might resume the voluntary gift, and whatever was acquired by the labour or fortune of the son, was immediately lost in the property of the father. His stolen goods (his oxen or his children) might be recovered by the same action of theft;\* and if either had been guilty of a trespass, it was in his own option to compensate the damage, or resign to the injured party the obnoxious animal. At the call of indigence or avarice, the master of a family could dispose of his children or his slaves. But the condition of the slave was far more advantageous, since he regained by the first manumission his alienated freedom: the son was again restored to his unnatural father; he might be condemned to servitude a second and a third time, and it was not till after the third sale and deliverance,† that he was enfranchised from the domestic power which had been so repeatedly abused. According to his discretion, a father might chastise the real or imaginary faults of his children, by stripes, by imprisonment, by exile, by sending

\* Pandect. l. stell. tit. ii. leg. 14, N. 13; leg. 38, N. 1. Such was the decision of Ulpian and Paul.

† The *trik mancipatio* is more clearly defined by Ulpian, (Fragment. l. 1. p. 301, 302, edit. Schultze); and best illustrated in the Antiquities of Heineccius.

them to the country to work in chains among the meanest of his servants. The majesty of a parent was armed with the power of life and death;<sup>a</sup> and the examples of such bloody executions, which were sometimes praised and never punished, may be traced in the annals of Rome, beyond the times of Pompey and Augustus. Neither age, nor rank, nor the consular office, nor the honours of a triumph, could exempt the most illustrious citizen from the bonds of filial subjection:<sup>b</sup> his own descendants were included in the family of their common ancestor; and the claims of adoption were not less sacred or less rigorous than those of nature. Without fear, though not without danger of abuse, the Roman legislators had reposed an unbounded confidence in the sentiments of paternal love; and the oppression was tempered by the assurance, that each generation must succeed in its turn to the awful dignity of parent and master.

The first limitation of paternal power is ascribed to the justice and humanity of Numa: and the

Limitation of the paternal authority.

<sup>a</sup> By Justinian, the old law, the jus vite of the Roman father, (Institut. l. ii. tit. ii. N. 7.) is reported and reproduced. Some legal vestiges are left in the Pandects (l. xliii. tit. xxi.; leg. ii. N. 4) and the Collatio Legum Romanarum et Massimianarum, (tit. ii. N. 2. p. 186).

<sup>b</sup> Except in public ceremonies, and in the actual exercise of his office. In publicis sacris atque muneribus, atque actionibus privatis, jura sua eduximus qui in magistratibus sunt, potestatem collata interquisiverunt patrum et consueverunt, &c. (Aul. Gellius, Noct. Atticæ, v. 7.) The lessons of the philosopher Titius were justified by the old and memorable example of Fabius; and we may contemplate the same story in the style of Lælius (xviii. 44) and the homely allusion of Claudius Quadrigarius the novelist.

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maid, who, with his father's consent, had espoused a freeman, was protected from the disgrace of becoming the wife of a slave. In the first ages, when the city was pressed, and often famished by her Latin and Tuscan neighbours, the sale of children might be a frequent practice; but as a Roman could not legally purchase the liberty of his fellow-citizen, the market must gradually fail, and the trade would be destroyed by the conquests of the republic. An imperfect right of property was at length communicated to sons; and the threefold distinction of *profectitious*, *adventitious*, and *professional*, was ascertained by the jurisprudence of the code and pandects.\* Of all that proceeded from the father, he imparted only the use, and reserved the absolute dominion: yet if his goods were sold, the filial portion was excepted, by a favourable interpretation, from the demands of the creditors. In whatever accrued by marriage, gift, or collateral succession, the property was secured to the son; but the father, unless he had been specially excluded, enjoyed the usufruct during his life. As a just and prudent reward of military virtue, the spoils of the enemy were acquired, possessed, and bequeathed by the soldier alone; and the fair analogy was extended to the emoluments of any liberal profession, the salary of public service, and the sacred liberality of the emperor or the empress. The life of a citizen

\* See the gradual enlargement and security of the filial portion in the Institutes, (l. ii, tit. 12); the Pandects, (l. xv, tit. 1; l. xli, tit. 1); and the Code, (l. iv, tit. xxv), xxviii.

was less exposed than his fortune to the abuse of paternal power. Yet his life might be adverse to the interest or passions of an unworthy father: the same crimes that flowed from the corruption, were more sensibly felt by the humanity, of the Augustan age; and the cruel Erixo, who whipt his son till he expired, was saved by the emperor from the just fury of the multitude.<sup>2</sup> The Roman father, from the licence of servile dominion, was reduced to the gravity and moderation of a judge. The presence and opinion of Augustus confirmed the sentence of exile pronounced against an intentional parricide by the domestic tribunal of Arius. Hadrian transported to an island the jealous parent, who, like a robber, had seized the opportunity of hunting, to assassinate a youth, the incestuous lover of his stepmother.<sup>3</sup> A private jurisdiction is repugnant to the spirit of monarchy; the parent was again reduced from a judge to an accuser; and the magistrates were enjoined by Severus Alexander to hear his complaints and execute his sentence. He could no longer take the life of a son without incurring the guilt and punishment of murder; and the pains of parricide, from which he had been excepted by the Pompeian law, were finally inflicted by the justice of Con-

<sup>2</sup> The examples of Erixo and Arius are related by Seneca, *de Clementia*, l. 14, 155, the former with horror, the latter with applause.

<sup>3</sup> *Quid tamis magis quam patris jure cum interfecti, non patris potestas in pietate debet non in atrocitate considerari.* (Marius, *l. 1*, tit. 1, in Pandect. l. xlviii, tit. 35, leg. 8).

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stantine.<sup>1</sup> The same protection was due to every period of existence; and reason must applaud the humanity of Paulus, for imposing the crime of murder to the father, who strangles, or starves, or abandons his new-born infant; or exposes him in a public place to find the mercy which he himself had denied. But the exposition of children was the prevailing and stubborn vice of antiquity: it was sometimes prescribed, often permitted, almost always practised with impunity, by the nations who never entertained the Roman ideas of paternal power; and the dramatic poets, who appeal to the human heart, represent with indifference a popular custom which was palliated by the motives of economy and compassion.\* If the father could subdue his own feelings, he might escape, though not the censure, at least the chastisement of the laws; and the Roman empire was stained with the blood of infants, till such murders were included, by Valentinian and his colleagues, in the letter and spirit of the Cornelian law. The lessons of juris-

<sup>1</sup> The *Præceptum* and *Cornelian laws de morte et parvulis*, are repeated, or rather abridged, with the last supplements of Alexander Severus, Constantine, and Valentinian, in the *Pandects* (l. xlviii. tit. viii. 123. and Code, l. 12. tit. xvi. xviii). See likewise the *Theodosian Code*, (l. 14. tit. 24. 12), with *Godfrey's Commentary*, (tom. iii. p. 84-113), who pours a flood of ancient and modern learning over these penal laws.

\* When the Chorus of Terence reproaches his wife for not slaying his orphans and exposing their infants, he speaks like a father and a master, and alludes the scruples of a foolish woman. See *Apuleius*, (*Metamorph.* l. 3. p. 337, edit. Delphin.)



prudence\* and Christianity had been insufficient to eradicate this inhuman practice, till their gentle influence was fortified by the terrors of capital punishment.<sup>2</sup>

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Experience has proved, that savages are the tyrants of the female sex; and that the condition of women is usually softened by the refinements of social life. In the hope of a robust progeny, Lycurgus had delayed the season of marriage; it was fixed by Numa at the tender age of twelve years, that the Roman husband might educate to his will a pure and obedient virgin.<sup>3</sup>

Husbands  
and wives.

According to the custom of antiquity, he bought his bride of her parents, and she fulfilled the *corruption*, by purchasing, with three pieces of copper, a just introduction to his house and household-deities. A sacrifice of fruits was offered by the pontiffs in the presence of ten witnesses; the contracting parties were seated on

The religious  
rites of  
marriage.

\* The opinion of the lawyers, and the dissolution of the marriage-ties, had introduced in the time of Tacitus some legal restraints, which might support his contrast of the best mores of the Germans to the loose legal system—that is to say, at Rome, (de Matrimonio Ger. mactorem, c. 19). Tertullian (ad Natheum, l. i, c. 33) relates his own charges and those of his brethren, against the heathen jurisprudence.

<sup>1</sup> The wise and humane sentence of the emperor Paul. II. Sententiam in Pandect. l. xxi, tit. iii, leg. 9, is represented as a moral precept by Gerard Naudé, (Opp. tom. I, in Justinum Paulum, p. 361-588, and Ander Respondit, p. 591-600), who maintains the opinion of Justin Lipsius, (Opp. tom. ii, p. 469, ad Belgas, cent. i, epist. 85), and as a positive binding law by Bynkershoek, (de Jure occidendi Liberos, Opp. tom. i, p. 318-340. Curia Secundus, p. 281-327). In a hurried but angry controversy the two friends deviated into the opposite extremes.

<sup>2</sup> Dionys. Hal. l. ii, p. 92, 93. Plutarch, in Numa, p. 140, 141. To equal any or all, unless an altar is set up, is a common practice.



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the same sheepskin; they tasted a salt cake of *far* or rice; and this *confarreation*,\* which denoted the ancient food of Italy, served as an emblem of their mystic union of mind and body. But this union on the side of the woman was rigorous and unequal; and she renounced the name and worship of her father's house, to embrace a new servitude decorated only by the title of adoption. A fiction of the law, neither rational nor elegant, bestowed on the mother of a family<sup>b</sup> (her proper appellation) the strange characters of sister to her own children, and of daughter to her husband or master, who was invested with the plenitude of paternal power. By his judgment or caprice her behaviour was approved, or censured, or chastised; he exercised the jurisdiction of life and death; and it was allowed, that in the cases of adultery or drunkenness,<sup>c</sup> the sentence might be properly inflicted. She acquired and inherited for the sole profit of her lord; and so clearly was woman defined, not as a *person*, but as a *thing*, that if the original title were deficient, she might be claimed, like other moveables, by the use and possession of an

\* Among the winter *frumenta*, the *triticea*, or bearded wheat; the *segetis*, or the unbarbed; the *far*, *adorn*, *segetis*, whose description perfectly tallies with the rice of Spain and Italy. I suspect this identity on the credit of M. Pancron in his useful and laborious *Matrimonium*, (p. 317-329).

<sup>b</sup> Aulus Gellius (*Noctes Atticæ*, xviii, 9) gives a ridiculous definition of *Elia Mellina*, *Matrona, quæ sciret, uterfamilias quæ cognoscere caperet, ut porceira and, utroque in the ewe kind.* He then adds the grandest meaning, *quæ in matrimonium vel in manus convenerat.*

<sup>c</sup> It was enough to have tasted wine, or to have stolen the key of the cellar, (*Phil. Hist. Nat.* xiv, 14).

entire year. The inclination of the Roman husband discharged or withheld the conjugal debt, so scrupulously exacted by the Athenian and Jewish laws; but as polygamy was unknown, he could never admit to his bed a fairer or more favoured partner.

After the Punic triumphs, the matrons of Rome aspired to the common benefits of a free and opulent republic: their wishes were gratified by the indulgence of fathers and lovers, and their ambition was unsuccessfully resisted by the gravity of Cato the Censor.\* They declined the solemnities of the old nuptials, defeated the annual prescription by an absence of three days, and, without losing their name or independence, subscribed the liberal and definite terms of a marriage-contract. Of their private fortunes, they communicated the use, and secured the property; the estates of a wife could neither be alienated nor mortgaged by a prodigal husband; their mutual gifts were prohibited by the jealousy of the laws; and the misconduct of

Precedent  
of the nup-  
tial contract.

\* Solon requires three payments per month. By the Minia, a daily debt was imposed on an idle, vigorous, young husband; twice a week on a citizen; once on a peasant; once in thirty days on a camel-driver; once in six months on a seaman. But the student or doctor was free from tribute; and so wife, if she received a weekly maintenance, could sue for a divorce; for one week a row of abstinence was allowed. Polygamy divided, without multiplying, the duties of the husband, Gellius, *Urb. Elusina*, l. iii. c. 6. In his works, vol. ii, p. III.—TBB.

\* On the Optian law we may hear the mitigating speech of Valerius Flaccus, and the severe remonstrance of the elder Cato, (*l. i. c. xxi. 1-8*). But we shall rather hear the polished histories of the eighth, than the rough statutes of the sixth, century of Rome. The principles, and even the style, of Cato are more accurately preserved by Aulus Gellius, (*l. x. 23*).

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either party might afford, under another name, a future subject for an action of theft. To this loose and voluntary compact, religious and civil rites were no longer essential; and, between persons of a similar rank, the apparent community of life was allowed as sufficient evidence of their nuptials. The dignity of marriage was restored by the Christians, who derived all spiritual grace from the prayers of the faithful and the benediction of the priest or bishop. The origin, validity, and duties of the holy institution, were regulated by the tradition of the synagogue; the precepts of the gospel; and the canons of general or provincial synods; and the conscience of the Christians was awed by the decrees and censures of their ecclesiastical rulers. Yet the magistrates of Justinian were not subject to the authority of the church: the emperor consulted the unbelieving civilians of antiquity, and the choice of matrimonial laws in the code and pandects, is directed by the earthly motives of justice, policy, and the natural freedom of both sexes.<sup>a</sup>

Liberty  
and abuse  
of divorce.

Besides the agreement of the parties, the essence of every rational contract, the Roman marriage re-

<sup>a</sup> For the system of Jewish and catholic matrimony, see Selden, (*Use Ebraica*, Opp. vol. II, p. 329-367); Bingham, (*Christian Antiquities*, I. xxi), and Chardon, (*Hist. des Sacramens*, tom. vi).

<sup>b</sup> The civil laws of marriage are exposed in the Institutes, l. i. § 23; the Pandects, l. xxi, xxiv, xlv, and the Code, l. vi; but on the title *de ritu nuptiarum* is yet imperfect, we are obliged to explore the fragments of Ulpian, tit. ix, p. 380, 381, and the *Collectio Legum Monachorum*, tit. vi, p. 130, 131, with the Notes of Pothoer and Schilling. They find, in the Commentary of Novius, (on the 1st Georgic and the 4th Æneid), two curious passages.

quired the previous approbation of the parents. A father might be forced by some recent laws to supply the wants of a mature daughter; but even his insanity was not generally allowed to supersede the necessity of his consent. The causes of the dissolution of matrimony have varied among the Romans;<sup>a</sup> but the most solemn sacrament, the confarreatum itself, might always be done away by rites of a contrary tendency. In the first ages, the father of a family might sell his children, and his wife was reckoned in the number of his children: the domestic judge might pronounce the death of the offender, or his mercy might expel her from his bed and house: but the slavery of the wretched female was hopeless and perpetual, unless he asserted for his own convenience the manly prerogative of divorce. The warmest applause has been lavished on the virtue of the Romans, who obtained from the exercise of this tempting privilege above five hundred years;<sup>b</sup> but the same fact evinces the unequal terms of a connection in which the slave was unable to renounce her tyrant, and the tyrant was unwilling to relinquish his slave. When the

<sup>a</sup> According to Plinarch, (p. 27), Romulus allowed only three grounds of a divorce—drunkenness, adultery, and false keys. Healed wives, the husband who showed his adultery, he fined half his goods to the wife, and half to the public treasury, and expelled a wife from the community to the territorial colony. This strange law was either imaginary or transient.

<sup>b</sup> In the year of Rome 222, Servius Cornelius Rutilius committed a foul, a good, but a barren wife, (Municipal Hist. L. II, p. 28. Plinarch in Numa, p. 141. Valerius Maximus, 5/8, & 1. Aulus Gellius 12/2. He was questioned by the censors, and fined by the people, and his divorce stood unimpaired to ten.



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Roman matrons became the equal and voluntary companions of their lords, a new jurisprudence was introduced, that marriage, like other partnerships, might be dissolved by the abdication of one of the associates. In three centuries of prosperity and corruption, this principle was enlarged to frequent practice and pernicious abuse. Passion, interest, or caprice, suggested daily motives for the dissolution of marriage; a word, a sign, a message, a letter, the mandate of a freedman, declared the separation; the most tender of human connections was degraded to a transient society of profit or pleasure. According to the various conditions of life, both sexes alternately felt the disgrace and injury; an inconstant spouse transferred her wealth to a new family, abandoning a numerous, perhaps a spurious, progeny to the paternal authority and care of her late husband; a beautiful virgin might be dismissed to the world, old, indigent, and friendless; but the reluctance of the Romans, when they were pressed to marriage by Augustus, sufficiently marks, that the prevailing institutions were least favourable to the males. A specious theory is confuted by this free and perfect experiment, which demonstrates, that the liberty of divorce does not contribute to happiness and virtue. The facility of separation would destroy all mutual confidence, and inflame every trifling dispute: the minute difference between an husband and a stranger, which might so easily be removed, might still more easily be forgotten; and the matron, who in five years can submit to the embraces of eight husbands, must

sease to reverence the chastity of her own person.<sup>a</sup>

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Limitations of the  
liberty of  
divorce.

Insufficient remedies followed with distant and tardy steps the rapid progress of the evil. The ancient worship of the Romans afforded a peculiar goddess to hear and reconcile the complaints of a married life; but her epithet of *Viriplaca*,<sup>1</sup> the appeaser of husbands, too clearly indicates on which side submission and repentance were always expected. Every act of a citizen was subject to the judgment of the *censors*; the first who used the privilege of divorce assigned, at their command, the motives of his conduct;<sup>2</sup> and a senator was expelled for dismissing his virgin spouse without the knowledge or advice of his friends. Whenever an action was instituted for the recovery of a marriage-portion, the *pretor*, as the guardian of equity, examined the cause and the characters, and gently inclined the scale in favour of the guiltless and injured party. Augustus, who united the powers of both magistrates, adopted their different modes of repressing

—Sic hinc octo mariti

Quinqueque per antea viros.

Journal, Satir. vi, 20h.

A rapid succession, which may not be credible, as well as the non consulium numero, sed maritorum annos omni computant, of Seneca. *de Beneficis*, iii, 18. Jeron saw at Rome a triumphant husband bury his twenty-first wife, who had entered twenty-two of his bed-chamber's postchambers, (*Opp. tom. i, p. 80*, of Gerusalem). But the ten husbands in a month of the poet Martial, is an extravagant hyperbole, *l. xi, epigram 7*.

<sup>1</sup> *Sanctum Viriplacum* (Valerius Maximus, l. ii, c. 1) in the Palatine region appears in the time of Theodosius, in the description of Rome by Fulvius Victor.

<sup>2</sup> Valerius Maximus, l. ii, c. 8. With some propriety he judges divorce more criminal than adultery: *ille namque conjugalis sacra aperta tractant, hoc etiam injuriæ tractata*.

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or enervating the license of divorce.\* The presence of seven Roman witnesses was required for the validity of this solemn and deliberate act: if any adequate provocation had been given by the husband, instead of the delay of two years, he was compelled to refund immediately, or in the space of six months; but if he could arraign the manners of his wife, her guilt or levity was expiated by the loss of the six or eighth part of her marriage-portion. The Christian princes were the first who specified the just causes of a private divorce; their institutions, from Constantine to Justinian, appear to fluctuate between the custom of the empire and the wishes of the church; and the author of the novels too frequently reforms the jurisprudence of the code and pandects. In the most rigorous laws, a wife was condemned to support a gamester, a drunkard, or a libertine, unless he were guilty of homicide, poison, or sacrilege, in which cases the marriage, as it should seem, might have been dissolved by the hand of the executioner. But the sacred right of the husband was invariably maintained to deliver his name and family from the disgrace of adultery: the list of mortal sins, either male or female, was curtailed and enlarged by successive regulations, and the obstacles of incurable impotence, long absence, and monastic

\* See the laws of Augustus and his successors, in Henneceus, ed. Leges Populi Romani, c. 19, in Opp. tom. vi. P. 1, p. 322-323.

\* Alie sunt leges Cæsaron, alie Clodii; aliud Papinianus, aliud Paulus iuxta præcepta, (Moran, tom. 1, p. 108. Seldeni, Uxor Eliseæ, l. 1. ff. de 31, p. 847-852).

profession, were allowed to rescind the matrimonial obligation. Whoever transgressed the permission of the law, was subject to various and heavy penalties. The woman was stript of her wealth and ornaments, without excepting the bodkin of her hair: if the man introduced a new bride into his bed, *her* fortune might be lawfully seized by the vengeance of his exiled wife. Forfeiture was sometimes commuted to a fine; the fine was sometimes aggravated by transportation to an island, or imprisonment in a monastery: the injured party was released from the bonds of marriage; but the offender, during life or a term of years, was disabled from the repetition of nuptials. The successor of Justinian yielded to the prayers of his unhappy subjects, and restored the liberty of divorce by mutual consent: the civilians were unanimous,<sup>3</sup> the theologians were divided,<sup>4</sup> and the ambiguous word, which contains the precept of Christ, is

<sup>3</sup> The Institutes are silent, but we may consult the Codes of Theodosius, (l. ii, tit. xvi, with Godefroy's Commentary, tom. i, p. 319-323), and Justinian, (l. v, tit. xvi); the Pseudo, (l. xiv, tit. ii), and the Novels, (xii, cxv, cxvii, cxviii, cxix, cxi). Justinian's alteration to the law between civil and ecclesiastical law.

<sup>4</sup> In pure Greek, *εἰσα* is not a common word; not even the proper meaning, formation; is strictly applied to matrimonial use. In a figurative sense, how far, and to what offences, may it be extended? Did Christ speak the Rabbinical or Syriac tongue? Of what original word is *εἰσα* the translation? How curiously is that Greek word translated in the various ancient and modern! There are two (Mark, i, 11; Luke, xii, 18) to one (Matthew, xix, 9) that such ground of divorce was not excepted by Jesus. Some critics have presumed to think, by an evasive answer, to avoid the giving offence either to the school of Sennius or to that of Hilar, Origen, Ulpian, &c. &c. l. ii, c. 18-22, 26, 31).

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Incest, concubines,  
and testaments.

flexible to any interpretation that the wisdom of a legislator can demand.

The freedom of love and marriage was restrained among the Romans by natural and civil impediments. An instinct, almost innate and universal, appears to prohibit the incestuous commerce\* of parents and children in the infinite series of ascending and descending generations. Concerning the oblique and collateral branches, nature is indifferent, reason mute, and custom various and arbitrary. In Egypt, the marriage of brothers and sisters was admitted without scruple or exception: a Spartan might espouse the daughter of his father, an Athenian that of his mother; and the nuptials of an uncle with his niece were applauded at Athens as an happy union of the dearest relations. The profane lawgivers of Rome were never tempted by interest or superstition to multiply the forbidden degrees; but they inflexibly condemned the marriage of sisters and brothers, hesitated whether first cousins should be touched by the same interdict; revered the parental character of aunts and uncles, and treated affinity and adoption as a just imitation of the ties of blood. According to the proud maxims of the republic, a legal marriage could only be contracted by free citizens; an honourable, at least an ingenuous, birth was required for the

\* The principles of the Roman jurisprudence are exposed by Justinian, *Instituti* l. 1, tit. xij. and the laws and maxims of the different nations of antiquity concerning forbidden degrees, &c. are explained by Dr. Taylor in his *Elements of Civil Law*, (p. 408, 514-550); a work of amusing, though curious, reading; but which cannot be perused for philosophical precision.



spouse of a senator: but the blood of kings could never mingle in legitimate nuptials with the blood of a Roman; and the name of Stranger degraded Cleopatra and Berenice,\* to live the concubines of Mark Antony and Titus.<sup>†</sup> This appellation, indeed so injurious to the majesty, cannot without indulgence be applied to the manners, of these oriental queens. A concubine, in the strict sense of the civilians, was a woman of servile or plebeian extraction, the sole and faithful companion of a Roman citizen, who continued in a state of celibacy. Her modest station below the honours of a wife, above the infamy of a prostitute, was acknowledged and approved by the laws: from the age of Augustus to the tenth century, the use of this secondary marriage prevailed both in the West and East, and the humble virtues of a concubine were often preferred to the pomp and insolence of a noble matron. In this connection, the two Antonines, the best of princes and of men, enjoyed the comforts of domestic love; the example was imitated by many citizens impatient of celibacy, but regardless of their families. If at any time they desired to legitimate their natural children, the conversion was instantly performed by the celebration of

\* When her father Agrippa died, (A. D. 44), Berenice was sixteen years of age, (Joseph. *l. i. Antiquit. Judae.* l. xiv. c. 8, p. 212, edit. Havercamp). She was therefore above fifty years old when Titus (A. D. 79) incestus iuribus inivit. This date would not have adorned the tragedy or pastoral of the tender Racine.

<sup>†</sup> The *Ægyptian conjurer* of Virgil (*Mæneid*, viii. 688) seems to be numbered among the monsters who warred with Mark Antony against Augustus, the senate, and the gods of Italy.

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their nuptials with a partner whose fruitfulness and fidelity they had already tried. By this epithet of *natural*, the offspring of the concubine were distinguished from the spurious brood of adultery, prostitution, and incest, to whom Justinian reluctantly grants the necessary aliments of life; and these natural children alone were capable of succeeding to a sixth part of the inheritance of their reputed father. According to the rigour of law, bastards were entitled only to the name and condition of their mother, from whom they might derive the character of a slave, a stranger, or a citizen. The outcasts of every family were adopted without reproach as the children of the state.\*

Guardians  
and wards.

The relation of guardian and ward, or, in Roman words, of *tutor* and *pupil*, which covers so many titles of the institutes and pandects,\* is of a very simple and uniform nature. The person and property of an orphan must always be trusted to the custody of some discreet friend. If the deceased father had not signified his choice, the *agnats*, or paternal kindred of the nearest degree, were compelled to act as the natural guardians: the Athenians were apprehensive of exposing the infant to the power of those most

\* The humble but legal rights of concubines and natural children, are stated in the Institutes, (l. i. tit. xxi; the Pandects, (l. i. tit. xli); the Code, (l. v. tit. xxv), and the Novels, (xxvi, lxxv). The researches of Heineccius and Glanvill (ad Legem Julianam de Pupillis-Populani, c. iv, p. 164-175; Opera Posthuma, p. 108-128) illustrate this interesting and domestic subject.

\* See the articles of guardians and wards in the Institutes, (l. i. tit. xlii-xlii); the Pandects, (l. xxvi, xxvii), and the Code, (l. i. tit. xxviii-lxx).

interested in his death; but an axiom of Roman jurisprudence has pronounced, that the charge of tutelage should constantly attend the emolument of succession. If the choice of the father, and the line of consanguinity, afforded no efficient guardian, the failure was supplied by the nomination of the pretor of the city, or the president of the province. But the person whom they named to this *public office* might be legally excused by insanity or blindness, by ignorance or inability, by previous enmity or adverse interest, by the number of children or guardianships with which he was already burdened, and by the immunities which were granted to the useful labours of magistrates, lawyers, physicians, and professors. Till the infant could speak and think, he was represented by the tutor, whose authority was finally determined by the age of puberty. Without his consent, no act of the pupil could bind himself to his own prejudice, though it might oblige others for his personal benefit. It is needless to observe, that the tutor often gave security, and always rendered an account; and that the want of diligence or integrity exposed him to a civil and almost criminal action for the violation of his sacred trust. The age of puberty had been rashly fixed by the civilians at fourteen; but as the faculties of the mind ripen more slowly than those of the body, a *censor* was interposed to guard the fortunes of the Roman youth from his own inexperience and headstrong passions. Such a trustee had been first instituted by the pretor, to save a family

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from the blind havoc of a prodigal or madman ; and the minor was compelled by the laws, to solicit the same protection, to give validity to his acts till he accomplished the full period of twenty-five years. Women were condemned to the perpetual tutelage of parents, husbands, or guardians : a sex created to please and obey was never supposed to have attained the age of reason and experience. Such at least was the stern and haughty spirit of the ancient law, which had been insensibly mollified before the time of Justinian.

II. Of  
Tutelage.  
Right of  
property.

II. The original right of property can only be justified by the accident or merit of prior occupancy ; and on this foundation it is wisely established by the philosophy of the civilians.\* The savage who hollows a tree, inserts a sharp stone into a wooden handle, or applies a string to an elastic branch, becomes in a state of nature the just proprietor of the canoe, the bow, or the hatchet. The materials were common to all ; the new form, the produce of his time and simple industry, belongs solely to himself. His hungry brethren cannot, without a sense of their own injustice, extort from the hunter the game of the forest overtaken or slain by his personal strength and dexterity. If his provident care preserves and multiplies the tame animals, whose nature is tractable to the arts of education, he acquires a perpetual title to the use and service of their numerous progeny, which derives its ex-

\* Institutes, l. 1, §. 1, tit. 1, §. 1. Compare the precise reasoning of Grotius and Bataillon (l. 1, tit. 1, §. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100) with the loose philosophy of Theophilus, (p. 267-268). The opinions of Ulpian are preserved in the Pandects, l. 1, tit. 1, §. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.



istence from him alone. If he incloses and cultivates a field for their sustenance and his own, a barren waste is converted into a fertile soil; the seed, the manure, the labour, create a new value, and the rewards of harvest are painfully earned by the fatigues of the revolving year. In the successive states of society, the hunter, the shepherd, the husbandman, may defend their possessions by two reasons which forcibly appeal to the feelings of the human mind,—that whatever they enjoy is the fruit of their own industry; and that every man who envies their felicity, may purchase similar acquisitions by the exercise of similar diligence. Such, in truth, may be the freedom and plenty of a small colony cast on a fruitful island. But the colony multiplies, while the space still continues the same: the common rights, the equal inheritance of mankind, are engrossed by the bold and crafty; each field and forest is circumscribed by the land-marks of a jealous master; and it is the peculiar praise of the Roman jurisprudence, that it asserts the claim of the first occupant to the wild animals of the earth, the air, and the waters. In the progress from primitive equity to final injustice, the steps are silent, the shades are almost imperceptible, and the absolute monopoly is guarded by positive laws and artificial reason. The active insatiate principle of self-love can alone supply the arts of life and the wages of industry; and as soon as civil government and exclusive property have been introduced, they become necessary to the existence of the human race. Except in the singular institutions of Sparta, the



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wisest legislators have disapproved an agrarian law as a false and dangerous innovation. Among the Romans, the enormous disproportion of wealth surmounted the ideal restraints of a doubtful tradition, and an obsolete statute; a tradition that the poorest follower of Romulus had been endowed with the perpetual inheritance of two *jugera*;<sup>\*</sup> a statute which confined the richest citizen to the measure of five hundred jugera, or three hundred and twelve acres of land. The original territory of Rome consisted only of some miles of wood and meadow along the banks of the Tiber; and domestic exchange could add nothing to the national stock. But the goods of an alien or enemy were lawfully exposed to the first hostile occupier; the city was enriched by the profitable trade of war; and the blood of her sons was the only price that was paid for the Vulsian sheep, the slaves of Britain, or the gems and gold of Asiatic kingdoms. In the language of ancient jurisprudence, which was corrupted and forgotten before the age of Justinian, these spoils were distinguished by the name of *manceps* or *mancipium*, taken with the hand; and whenever they were sold or *emancipated*, the purchaser required some assurance that they had been the property of an enemy, and not of a fellow-citizen.\* A citizen could

\* The *heredium* of the first Romans is defined by Varro, (*de Re Rusticâ*, l. i, c. 6, p. 141; c. x, p. 160, 161, edit. Gossert), and illustrated by Pliny's declaration, (*Hist. Natur.* xviii, 2). A just and learned comment is given in the *Administration des Terres chez les Romains*, (p. 12-56).

\* The *res mancipi* is explained from faint and remote lights by Ulpian (*Digestum*, tit. xviii, p. 616, 619) and Bykershoek, (*Oppo-*  
tun. l.

only forfeit his rights by apparent dereliction, and such dereliction of a valuable interest could not easily be presumed. Yet, according to the twelve tables, a prescription of one year for moveables, and of two years for immoveables, abolished the claim of the ancient master, if the actual possessor had acquired them by a fair transaction from the person whom he believed to be the lawful proprietor.\* Such conscientious injustice, without any mixture of fraud or force, could seldom injure the members of a small republic: but the various periods of three, of ten, or of twenty years, determined by Justinian, are more suitable to the latitude of a great empire. It is only in the term of prescription that the distinction of real and personal fortune has been remarked by the civilians, and their general idea of property is that of simple, uniform, and absolute dominion. The subordinate exceptions of *use*, of *usufruct*,<sup>†</sup> of *servitudes*,<sup>‡</sup> imposed for the benefit of a neighbour on lands

turn, i. p. 306-315). The collection is somewhat arbitrary; and as none except myself have assigned a reason, I am diffident of my own.

\* From this short prospectus, Hume (History, vol. i. p. 474) deduces that there could not then be more order and settlement in Italy than was amongst the Tartars. By the opinion of his adversary Wallam, he is reproached, and not without reason, for overlooking the conditions, *Quintus*, l. ii. 10. 11).

† See the Institutes (l. i. tit. (v. v) and the Pandects, l. viii. Nodding has composed a learned and diffuse treatise de *Usufructu*, (Opus. tom. i. p. 387-478).

‡ The questions de *Servitutibus* are discussed in the Institutes (l. ii. tit. 16) and Pandects, l. viii. Ciceron (see Masson, c. 21, and Lactantius, *Institut. Divin.* l. i. c. 1), seems to laugh at the insignificant distinctions, *de aqua pluviali servituti*, &c. Yet it might be of frequent use among litigious neighbours, both in town and country.

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and houses are abundantly explained by the professors of jurisprudence. The claims of property, as far as they are altered, by the mixture, the division, or the transformation of substances, are investigated with metaphysical subtlety by the same civilians.

Of inheritance  
and  
succession.

The personal title of the first proprietor must be determined by his death: but the possession, without any appearance of change, is peaceably continued in his children, the associates of his toil and the partners of his wealth. This natural inheritance has been protected by the legislators of every climate and age, and the father is encouraged to persevere in slow and distant improvements, by the tender hope, that a long posterity will enjoy the fruits of his labour. The *principle* of hereditary succession is universal, but the *order* has been variously established by convenience or caprice, by the spirit of national institutions, or by some partial example, which was originally decided by fraud or violence. The jurisprudence of the Romans appears to have deviated from the equality of nature, much less than the Jewish,<sup>1</sup> the Athenian,<sup>2</sup> or the English institutions.<sup>3</sup> On the

\* Among the patriarchs, the first-born enjoyed a double and spiritual primogeniture. (Genesis, xix, 31). In the land of Canaan he was entitled to a double portion of inheritance, (Deuteronomy, xxi, 17, with le Clerc's judicious Commentary).

<sup>2</sup> At Athens the sons were equal, but the poor daughters were endowed at the discretion of their brothers. See the *Alcibiades* pleading of Ismias, (in the sixth volume of the Greek Orators), illustrated by the version and comment of Sir William Jones, a scholar, a lawyer, and a man of genius.

<sup>3</sup> In England, the eldest son alone inherits all the land; a few, says the orthodox judge Blackstone, (Commentaries on the laws of England,

death of a citizen, all his descendants, unless they were already freed from his paternal power, were called to the inheritance of his possessions. The insolent prerogative of primogeniture was unknown: the two sexes were placed on a just level; all the sons and daughters were entitled to an equal portion of the patrimonial estate; and if any of the sons had been intercepted by a premature death, his person was represented, and his share was divided, by his surviving children. On the failure of the direct line, the right of succession must diverge to the collateral branches. The degrees of kindred<sup>b</sup> are numbered by the civilians, ascending from the last possessor to a common parent, and descending from the common parent to the next heir: my father stands in the first degree, my brother in the second, his children in the third, and the remainder of the series may be conceived by fancy, or pictured in a genealogical table. In this computation, a distinction was made, essential to the laws and even the constitution of Rome; the *agnats*, or persons connected by a line of males, were called, as they stood in the nearest degree, to an equal partition; but a female was incapable of transmitting any legal claims; and the *cognats* of every rank, without excepting the dear relation

Civil degrees of kindred.

England, vol. ii. p. 215), unjust only in the opinion of younger brothers. It may be of some political use in sharpening their industry.

<sup>b</sup> Blackstone's Tables (vol. ii. p. 317) represent and compare the degrees of the civil with those of the *canon* and common law. A separate treatise of Julius Paulus, de gradibus et affinitatibus, is inserted or abridged in the Pandects, l. xxxviii, tit. 25. In the fifth degree he computes (N<sup>o</sup>. 19) 1024 persons.



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of a mother and a son, were disinherited by the twelve tables, as strangers and aliens. Among the Romans, a *gens* or lineage was united by a common name and domestic rites: the various *cognomens* or *surnames* of Scipio or Marcellus, distinguished from each other the subordinate branches or families of the Cornelian or Claudian race: the default of the *agnata*, of the same surname, was supplied by the larger denomination of *gentiles*; and the vigilance of the laws maintained, in the same name, the perpetual descent of religion and property. A similar principle dictated the Voconian law,<sup>1</sup> which abolished the right of female inheritance. As long as virgins were given or sold in marriage, the adoption of the wife extinguished the hopes of the daughter. But the equal succession of independent matrons, supported their pride and luxury, and might transport into a foreign house the riches of their fathers. While the maxims of Cato<sup>2</sup> were revered, they tended to perpetuate in each family a just and virtuous mediocrity; till female blandishments insensibly triumphed; and every salutary restraint was lost in the dissolute greatness of the republic. The rigour of the decemvirs was tempered by the equity of the pretors. Their edicts restored emancipated and

<sup>1</sup> The Voconian law was enacted in the year of Rome 584. The younger Scipio, who was then 17 years of age, (Festus, *Supplementum*, lib. xxi, 46), turned an action of exercising his property to his mother, sisters, &c. (Polihem, *int.* ii, l. xxii, p. 1445-1454, edit. Gronov: a domestic witness).

<sup>2</sup> Legem Voconiam (Ermuth, *Class. Ciceroniana*) magis voce bonis latrilium (at lxx years of age) emulsi, says old Cato, (de Senectute, c. 8). August Gellius (vi, 13; xii, 6) has saved some passages.



posthumous children to the rights of nature; and upon the failure of the *agnats*, they preferred the blood of the *cognats* to the name of the gentiles, whose title and character were insensibly covered with oblivion. The reciprocal inheritance of mothers and sons was established in the Tertullian and Orphitian decrees by the humanity of the senate. A new and more impartial order was introduced by the novels of Justinian, who affected to revive the jurisprudence of the twelve tables. The lines of masculine and female kindred were confounded: the descending, ascending, and collateral series, was accurately defined; and each degree, according to the proximity of blood and affection, succeeded to the vacant possessions of a Roman citizen.<sup>1</sup>

The order of succession is regulated by nature, or at least by the general and permanent reason of the lawgiver; but this order is frequently violated by the arbitrary and partial *wills* which prolong the dominion of the testator beyond the grave.<sup>2</sup> In the simple state of society, this last use or abuse of the right of property is seldom indulged: it was introduced at Athens by the

Introduc-  
tion and  
liberty of  
testaments.

<sup>1</sup> See the law of succession in the Institutes of Calvis, (l. ii, tit. viii, p. 130-144), and Justinian, (l. iii, tit. i-vi), with the Greek version of Theophilus, p. 513-575, 588-600; the Pandects, (l. xxviii, tit. vi-viii); the Code, (l. vi, tit. i-vi), and the Novels, (lxxviii).

<sup>2</sup> That succession was the rule, testament the exception, is proved by Taylor, (Elements of Civil Law, p. 319-327), a learned, candid, spirited writer. In the 1st and 2d books the method of the Institutes is doubtless perpetuated; and the Chancellor Daguesseau (Georges, tom. i, p. 372) wishes his countryman Domat in the place of Trifolium. Yet necessary before succession is not strictly the natural order of the civil law.

EDAP. laws of Solon : and the private testaments of the  
 XIV. father of a family are authorized by the twelve  
 tables. Before the time of the decemvirs,\* a Roman citizen exposed his wishes and motives to the assembly of the thirty curiæ or parishes, and the general law of inheritance was suspended by an occasional act of the legislature. After the permission of the decemvirs, each private lawgiver promulgated his verbal or written testament in the presence of five citizens, who represented the five classes of the Roman people ; a sixth witness attested their concurrence ; a seventh weighed the copper-money, which was paid by an imaginary purchaser ; and the estate was emancipated by a fictitious sale and immediate release. This singular ceremony,† which excited the wonder of the Greeks, was still practised in the age of Severus ; but the pretors had already approved a more simple testament, for which they required the seals and signatures of seven witnesses, free from all legal exception, and purposely summoned for the execution of that important act. A domestic monarch, who reigned over the lives and fortunes of his children, might distribute their respective shares according to the degrees of their merit or his affection : his arbitrary

\* Prior examples of testaments are perhaps fabulous. At Athens a childless father only could make a will, (Plutarch, in Solone, tom. i, p. 164. See Instæ and Jovius.)

† The testament of Augustus is specified by Suetonius, (in Augusto, c. 101, in Neron. c. 4), who may be studied as a code of Roman antiquities. Plutarch (Opuscul. tom. ii, p. 976) is surprised that the Romans prepared long and voluminous legacies, *longa et voluminosa legamenta, longa et voluminosa testamenta*. The language of Ulpian (Fragment. tit. xx, p. 627, edit. Schulting) is almost too exclusive—*solus in usq. est*.

displeasure chastised an unworthy son by the loss of his inheritance and the mortifying preference of a stranger. But the experience of unnatural parents recommended some limitations of their testamentary powers. A son, or, by the laws of Justinian, even a daughter, could no longer be disinherited by their silence: they were compelled to name the criminal, and to specify the offence; and the justice of the emperor enumerated the sole causes that could justify such a violation of the first principles of nature and society.<sup>2</sup> Unless a legitimate portion, a fourth part, had been reserved for the children, they were entitled to institute an action or complaint of *inofficious* testament, to suppose that their father's understanding was impaired by sickness or age; and respectfully to appeal from his rigorous sentence to the deliberate wisdom of the magistrate. In the Roman jurisprudence, an essential distinction was admitted between the inheritance and the legacies. The heirs who succeeded to the entire unity, or to any of the twelve fractions of the substance of the testator, represented his civil and religious character, asserted his rights, fulfilled his obligations, and discharged the gifts of friendship or liberality which his last will had bequeathed under the name of legacies. But as the imprudence or prodigality of a dying man might exhaust the inheritance, and leave only risk and labour to his successor, he was empowered to retain the *Falcidian* portion; to deduct, before

<sup>2</sup> Justinian (Novell. ext. N<sup>o</sup> 3, 4) enumerates only the public and private crimes, for which a son might likewise disinherit his father.

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the payment of the legacies, a clear fourth for his own emolument. A reasonable time was allowed to examine the proportion between the debts and the estate, to decide whether he should accept or refuse the testament; and if he used the benefit of an inventory, the demands of the creditors could not exceed the valuation of the effects. The last will of a citizen might be altered during his life, or rescinded after his death: the persons whom he named might die before him, or reject the inheritance, or be exposed to some legal disqualification. In the contemplation of these events, he was permitted to substitute second and third heirs, to replace each other according to the order of the testament; and the incapacity of a madman or an infant to bequeath his property, might be supplied by a similar substitution.³ But the power of the testator expired with the acceptance of the testament: each Roman of mature age and discretion acquired the absolute dominion of his inheritance, and the simplicity of the civil law was never clouded by the long and intricate entails which confine the happiness and freedom of unborn generations.

Codicils
and trusts.

Conquest and the formalities of law established the use of *codicils*. If a Roman was surprised by death in a remote province of the empire, he addressed a short epistle to his legitimate or testa-

³ The substitution *fiduciaria* of the modern civil law is a feudal idea grafted on the Roman jurisprudence, and bears scarcely any resemblance to the ancient *fiduciaria*, (*Institutiones du Droit François*, tom. 1, p. 347-383. *Decisions de Jurisprudence*, tom. ix, p. 672-694). They were stretched to the fourth degree by an abuse of the clerk Nodé; a garbled, perplexed, declamatory law.

mentary heir: who fulfilled with honour, or neglected with impunity, this last request, which the judges before the age of Augustus were not authorized to enforce. A codicil might be expressed in any mode, or in any language; but the subscription of five witnesses must declare that it was the genuine composition of the author. His intention, however laudable, was sometimes illegal; and the invention of *fidei-commissa*, or trusts, arose from the struggle between natural justice and positive jurisprudence. A stranger of Greece or Africa might be the friend or benefactor of a childless Roman, but none, except a fellow-citizen, could act as his heir. The Voconian law, which abolished female succession, restrained the legacy or inheritance of a woman to the sum of one hundred thousand sesterces;* and an only daughter was condemned almost as an alien in her father's house. The zeal of friendship, and parental affection, suggested a liberal artifice: a qualified citizen was named in the testament, with a prayer or injunction that he would restore the inheritance to the person for whom it was truly intended. Various was the conduct of the trustees in this painful situation: they had sworn to observe the laws of their country, but honour prompted them to violate their oath; and if they preferred their interest under the mask of patriotism, they forfeited the esteem of every virtuous mind. The declaration of Augustus relieved their doubts,

* Dion Cassius (Ann. 4, l. 19), p. 813, with Haimon's *Novæ species* in Greek money the sum of 22,000 drachmas.

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gave a legal sanction to confidential testaments and codicils, and gently unravelled the forms and restraints of the republican jurisprudence.* But as the new practice of trusts degenerated into some abuse, the trustee was enabled, by the Trebellian and Pegasian decrees, to reserve one-fourth of the estate, or to transfer on the head of the real heir all the debts and actions of the succession. The interpretation of testaments was strict and literal; but the language of *trusts* and codicils was delivered from the minute and technical accuracy of the civilians.²

III. The general duties of mankind are imposed by their public and private relations: but their specific *obligations* to each other can only be the effect of, 1. a promise, 2. a benefit, or, 3. an injury: and when these obligations are ratified by law, the interested party may compel the performance by a judicial *action*. On this principle the civilians of every country have erected a similar jurisprudence, the fair conclusion of universal reason and justice.³

* The revolutions of the Roman laws of inheritance are easily, though sometimes fancifully, deduced by Montesquieu; (*Esprit des Loix*, l. xxvii).

² Of the civil jurisprudence of successions, testaments, codicils, legacies, and trusts, the principles are ascertained in the Institutes of Gaius, (l. ii, tit. ii-ix, p. 91-144); Justinian, (l. ii, tit. x-xxv), and Theophilus, (p. 328-414); and the immense detail occupies twelve books (xxviii-xxxix) of the Pandects.

³ The Institutes of Gaius, (l. ii, tit. ix, x, p. 144-214); of Justinian, (l. iii, tit. xix-xxii; l. iv, tit. i-ii), and of Theophilus, (p. 616-837), distinguish four sorts of obligations—*aut re*, *aut verbis*, *aut litibus*, *et censualibus*; but I confess myself partial to my own division.

1. The goddess of *faith* (of human and social faith) was worshipped, not only in her temples, but in the lives of the Romans; and if that nation was deficient in the more amiable qualities of benevolence and generosity, they astonished the Greeks by their sincere and simple performance of the most burdensome engagements.* Yet among the same people, according to the rigid maxims of the patricians and decemvirs, a *naked pact*, a promise, or even an oath, did not create any civil obligation, unless it was confirmed by the legal form of a *stipulation*. Whatever might be the etymology of the Latin word, it conveyed the idea of a firm and irrevocable contract, which was always expressed in the mode of a question and answer. Do you promise to pay me one hundred pieces of gold? was the solemn interrogation of *Seius*. I do promise—was the reply of *Sempronius*. The friends of *Sempronius*, who answered for his ability and inclination, might be separately sued at the option of *Seius*; and the benefit of partition, or order of reciprocal actions, insensibly deviated from the strict theory of stipulation. The most cautious and deliberate consent was justly required to sustain the validity of a gratuitous promise; and the citizen who might have obtained a legal security, incurred the suspicion of fraud, and paid the forfeit of his neglect. But the ingenuity of the civilians

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Promissæ.

* How much is the cool, rational evidence of Polybius (l. vi. p. 483; l. xxi. p. 1459. 1460) superior to vague, indiscriminate assertions—*quantum maxime et principum sermo est*, (A. Gellius, x. c. 1.)

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successfully laboured to convert simple engagements into the form of solemn stipulations. The pretors, as the guardians of social faith, admitted every rational evidence of a voluntary and deliberate act, which in their tribunal produced an equitable obligation, and for which they gave an action and a remedy.*

Benefit.

2. The obligations of the second class, as they were contracted by the delivery of a thing, are marked by the civilians with the epithet of real.† A grateful return is due to the author of a benefit; and whoever is intrusted with the property of another, has bound himself to the sacred duty of restitution. In the case of a friendly loan, the merit of generosity is on the side of the lender only; in a deposit, on the side of the receiver; but in a *pledge*, and the rest of the selfish commerce of ordinary life, the benefit is compensated by an equivalent; and the obligation to restore is variously modified by the nature of the transaction. The Latin language very happily expresses the fundamental difference between the *commodatum* and the *mutuum*, which our poverty is reduced to confound under the vague and common appellation of a loan. In the former, the borrower was obliged to restore the same individual thing with

* The *Jus Pretorium de Pactis et Transactionibus* is a separate and satisfactory treatise of Gerard Noodt, (Opp. tom. i. p. 468-564). And I will here observe that the universities of Holland and Brabant, in the beginning of the present century, appear to have studied the civil law on the most just and liberal principles.

† The nice and various subject of contracts by consent is spread over four books (viii.-xi.) of the Pandects, and is one of the parts best deserving of the attention of an English student.

which he had been *accommodated* for the temporary supply of his wants; in the latter, it was destined for his use and consumption, and he discharged this *mutual* engagement, by substituting the same specific value, according to a just estimation of number, of weight, and of measure. In the contract of *sale*, the absolute dominion is transferred to the purchaser, and he repays the benefit with an adequate sum of gold or silver, the price or universal standard of all earthly possessions. The obligation of another contract, that of *location*, is of a more complicated kind. Lands or houses, labour or talents, may be hired for a definite term; at the expiration of the time, the thing itself must be restored to the owner with an additional reward for the beneficial occupation and employment. In these lucrative contracts, to which may be added those of partnership and commissions, the civilians sometimes imagine the delivery of the object, and sometimes presume the consent of the parties. The substantial pledge has been refined into the invisible rights of a mortgage or *hypotheca*; and the agreement of sale, for a certain price, imputes, from that moment, the chances of gain or loss to the account of the purchaser. It may be fairly supposed, that every man will obey the dictates of his interest; and if he accepts the benefit, he is obliged to sustain the expence, of the transaction. In this boundless subject, the historian will observe the *location* of land and money, the rent of the one and the interest of the other, as they materially affect the prosperity of agriculture and commerce. The

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money.

landlord was often obliged to advance the stock and instruments of husbandry, and to content himself with a partition of the fruits. If the feeble tenant was oppressed by accident, contagion, or hostile violence, he claimed a proportionable relief from the equity of the laws: five years were the customary term, and no solid or costly improvements could be expected from a farmer, who, at each moment, might be ejected by the sale of the estate.* Usury,^b the inveterate grievance of the city, had been discouraged by the twelve tables,^c and abolished by the clamours of the

* The covenants of rent are defined in the Pandects (l. xix) and the Code, (l. ix, tit. lxxv). The quinquennium, or term of five years, appears to have been a custom rather than a law; but in France all kinds of land were determined in nine years. This limitation was removed only in the year 1774. (*Encyclopédie Méthodique*, tom. 6, de la Jurisprudence, p. 668, 669), and I am sorry to observe that it yet prevails in the despotisms and happy country where I am permitted to reside.

^b I might implicitly acquiesce in the sense and burning of the three books of G. Noodt, de *hæres et usuris*, (Opp. tom. 4, p. 173-206). The interpretation of the *usuræ* or usurious loans at twelve, the *usuræ et non per cent.* is maintained by the best critics and civilians: Noodt, (l. ii, c. 2, p. 207); Gravina, (Opp. p. 203, &c. 210); Huetius, (*Antiquitat. ad Institut. l. iii, tit. xvi*); Montesquieu, (*Esprit des Loix*, l. xiii, c. 22, tom. iii, p. 38; *Défense de l'Esprit des Loix*, tom. iii, p. 478, &c.), and above all John Frederic Gronovius, the *Pantheus Veteris*, l. iii, c. 13, p. 213-217, and his three Annotations, p. 453-553, the founder, or at least the champion, of this probable opinion; which is however perplexed with some difficulties.

^c *Primum xii tabulis sancitum est ne quis centuræ fauore amplius crederet*, (Tacit. Annal. vi, 16). Pour peu que Montesquieu, (*Esprit des Loix*, l. xiii, c. 22) qu'on soit versé dans l'histoire de Rome, on verra qu'une pareille loi ne devoit pas être l'ouvrage des législateurs. Was Tacitus ignorant—or stupid? But the wise and more virtuous patricians might sacrifice their avarice to their ambition, and might attempt to check the odious practice by such interest as a lender would accept, and such penalties as no debtor would incur.

people. It was revived by their wants and idleness, tolerated by the discretion of the pretors, and finally determined by the code of Justinian. Persons of illustrious rank were confined to the moderate profit of four *per cent.*; six was pronounced to be the ordinary and legal standard of interest; eight was allowed for the convenience of manufacturers and merchants; twelve was granted to nautical insurance, which the wiser ancients had not attempted to define; but except in this perilous adventure, the practice of exorbitant usury was severely restrained.⁴ The most simple interest was condemned by the clergy of the East and West:⁵ but the sense of mutual benefit, which had triumphed over the laws of the republic, has resisted with equal firmness the decrees of the church, and even the prejudices of mankind.⁶

3. Nature and society impose the strict obligation of repairing an injury; and the sufferer by private injustice, acquires a personal right and a legitimate action. If the property of another be intrusted to our care, the requisite degree of care may rise and fall according to the benefit which we derive from such temporary possession; we are

⁴ Justinian has not condemned to give usury a place in his Institutes; but the necessary rules and restrictions are inserted in the Pandects (l. xxi. tit. i. §) and the Code. (l. vi. tit. xxvii. xxviii.)

⁵ The fathers are unanimous. (Bacleyne, *Manuel des Pères*, p. 144. &c.) Cyprian, Lactantius, Basil, Chrysostom, (see his interesting arguments in Noëll, l. i. c. 7, p. 188), Gregory of Nyssa, Ambrose, Jerome, Augustine, and a host of councils and ecclesiastics.

⁶ Cato, Seneca, Plutarch, have loudly condemned the practice or shame of usury. According to the etymology of *giuoco* and *gioco*, the principal is supposed to generate the interest: a head of barren mael, explains Shakespeare—and the stage is the scene of the public sale.

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seldom made responsible for inevitable accident, but the consequences of a voluntary fault must always be imputed to the author.^a A Roman pursued and recovered his stolen goods by a civil action of theft: they might pass through a succession of pure and innocent hands, but nothing less than a prescription of thirty years could extinguish his original claim. They were restored by the sentence of the pretor, and the injury was compensated by double, or three-fold, or even quadruple damages, as the deed had been perpetrated by secret fraud or open rapine, as the robber had been surprised in the fact or detected by a subsequent research. The Aquilian law^b defended the living property of a citizen, his slaves and cattle, from the stroke of malice or negligence: the highest price was allowed that could be ascribed to the domestic animal at any moment of the year preceeding his death: a similar latitude of thirty days was granted on the destruction of any other valuable effects. A personal injury is blunted or sharpened by the manners of the times and the sensibility of the individual: the pain or the disgrace of a word or blow cannot easily be appreciated by a pecuniary equivalent. The rude jurisprudence of the decemvirs had confounded all hasty insults, which did not amount to the frac-

^a Sir William Jones has given us ingenious and rational Essay on the Law of Bailments. (London, 1781, p. 127, *et passim*). He is perhaps the only lawyer equally conversant with the post-books of Westminster, the Commentaries of Ulpian, the Attic pleadings of Isæus, and the sentences of Arabian and Persian caliphs.

^b Noodt (Opp. tom. i. p. 137-142) has composed a separate treatise, *de Legem Aquilianam*, (Pandect. l. 22, tit. 10).

ture of a limb, by condemning the aggressor to the common penalty of twenty-five *asses*. But the same denomination of money was reduced, in three centuries, from a pound to the weight of half an ounce; and the insolence of a wealthy Roman indulged himself in the cheap amusement of breaking and satisfying the law of the twelve tables. Veratius ran through the streets striking on the face the inoffensive passengers, and his attendant purse-bearer immediately silenced their clamours by the legal tender of twenty-five pieces of copper, about the value of one shilling. The equity of the pretors examined and estimated the distinct merits of each particular complaint. In the adjudication of civil damages, the magistrate assumed a right to consider the various circumstances of time and place, of age and dignity, which may aggravate the shame and sufferings of the injured person; but if he admitted the idea of a fine, a punishment, an example, he invaded the province, though, perhaps, he supplied the defects, of the criminal law.

The execution of the Alban dictator, who was dismembered by eight horses, is represented by Livy as the first and the last instance of Roman cruelty in the punishment of the most atrocious crimes.¹ But this act of justice, or revenge,

Punishment.

¹ Aulus Gellius (*Noct. Attic.* xi. 1) borrowed his story from the Commentaries of Q. Labeo on the XII tables.

² The narrative of Livy (i. 28) is weighty and solemn. At its close the Alban massacre is an heroic collection, worthy of Virgil's humanity, (*Æneid.* viii. 643). Heyne, with his usual good taste, observes that the subject was too horrid for the shield of Æneas, (*Ann.* iii. p. 229).



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of the
twelve
tables.

was inflicted on a foreign enemy in the heat of victory, and at the command of a single man.

The twelve tables afford a more decisive proof of the national spirit, since they were framed by the wisest of the senate, and accepted by the free voices of the people; yet these laws, like the statutes of Draco,¹ are written in characters of blood.² They approve the inhuman and unequal principle of retaliation: and the forfeit of an eye for an eye, a tooth for a tooth, a limb for a limb, is rigorously exacted, unless the offender can redeem his pardon by a fine of three hundred pounds of copper. The decemvirs distributed with much liberality the slighter chastisements of flagellation and servitude; and nine crimes of a very different complexion are adjudged worthy of death. 1. Any act of *treason* against the state, or of correspondence with the public enemy. The mode of execution was painful and ignominious: the head of the degenerate Roman was shrouded in a veil, his hands were tied behind his back, and, after he had been scourged by the lictor, he was suspended in the midst of the forum on a cross, or inauspicious tree. 2. Nocturnal meetings in the city; whatever might be the pretence, of pleasure, or religion, or the public good. 3. The murder

¹ The age of Draco (Olympiad xxix. 1) is fixed by Sir John Marsham (*Canon Chronol.*, p. 533-599) and Corradi, (*Facti Attici*, tom. iii. p. 62). For his laws, see the writers on the government of Athens, *Sigonius*, *Mourmou*, *Petrus*, &c.

² The eighth, *de delictis*, of the 12 tables is delineated by Grævius, (*Opp.* p. 122, 123, with a Commentary, p. 214-230). *Anian Gellius* (c. 1, 7) and the *Collatio Legum Mosaicarum et Romanarum* afford much original information.

of a citizen; for which the common feelings of mankind demand the blood of the murderer. Poison is still more odious than the sword or dagger; and we are surprised to discover, in two flagitious events, how early such subtle wickedness had infected the simplicity of the republic, and the chaste virtues of the Roman matrons.³ The parricide who violated the duties of nature and gratitude, was cast into the river or the sea, inclosed in a sack; and a cock, a viper, a dog, and a monkey, were successively added as the most suitable companions.⁴ Italy produces no monkeys; but the want could never be felt, till the middle of the sixth century first revealed the guilt of a parricide.⁵ 4. The malice of an incendiary. After the previous ceremony of whipping, he himself was delivered to the flames; and in this ex-

³ Livy mentions two remarkable and flagitious cases, of 3000 persons accused, and of 190 noble matrons convicted, of the crime of poisoning, (xl, 43; vii, 18). Mr. Hume discriminates the ages of private and public victims, (Essays, vol. i, p. 22, 23). I would rather say that such obduracy of mischief (as in France in the year 1880) are accidents and prodigies which leave no marks on the manners of a nation.

⁴ The *vi Tabulae* and *Cleus* (*qui Hæc in Americo*, c. 25, 26) are consistent with the sack; Seneca (*Excerpt. Contravers. v, 4*) admits it with surprise; Juvenal puns the guiltless monkey, (*lineola clausa*—*Satir.* xiii, 158). Hadrian, (*apud Domitianum Magnæm*, l. vi, c. 10, p. 674-876; with Schutting's *Notæ*; *Modestinus*, (*Pandict. rivm*, tit. ix, leg. 9); *Constantine*, (*l. i, tit. xviii*), and *Justinian*, (*l. i, tit. xviii*), enunciate all the components of the parricide. But this fanciful execution was simplified in practice. Hadrian *sanctæ viæ exartimæ* vel *ad hanc dignæ*, (*l. i, tit. lxxviii*, *Recept. l. i, tit. xxiv*, p. 312, edit. Schutting).

⁵ The first parricide at Rome was L. Otho, after the second Punic war, (*Plutarch in Romulo*, tom. 2, p. 87). During the Civils, P. Mithridates was guilty of the first matricide, (*l. i, tit. lxxviii*).

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ample alone our reason is tempted to approve the justice of retaliation. 5. *Judicial perjury*. The corrupt or malicious witness was thrown headlong from the Tarpeian rock to expiate his falsehood, which was rendered still more fatal by the severity of the penal laws, and the deficiency of written evidence. 6. The corruption of a judge, who accepted bribes, to pronounce an iniquitous sentence. 7. Libels and satires, whose rude strains sometimes disturbed the peace of an illiterate city. The author was beaten with clubs, a worthy chastisement, but it is not certain that he was left to expire under the blows of the executioner.* 8. The nocturnal mischief of damaging or destroying a neighbour's corn. The criminal was suspended as a grateful victim to Ceres. But the Sylvian deities were less implacable, and the extirpation of a more valuable tree was compensated by the moderate fine of twenty-five pounds of copper. 9. Magical incantations; which had power, in the opinion of the Latian shepherds, to exhaust the strength of an enemy, to extinguish his life, and remove from their seats his deep-rooted plantations. The cruelty of the twelve tables against insolvent debtors still remains to be told; and I shall dare to prefer the literal sense of antiquity, to the specious refinements of modern

* Horace talks of the *formidatæ fustis*, (l. ii. *epist.* 6. 134) — *non Cicero de Republicâ* 6. 19. *apud Augustin. de Civitat. Dei*, ix. 8. *in Fragment. Philosoph. tom.* 61. p. 383. *edit. Olivet*; affirms that the *documenta* made *libelli* & capital offences; *non perperam res capite mittuntur* — *perperam!*

criticism.* After the judicial proof or confession of the debt, thirty days of grace were allowed before a Roman was delivered into the power of his fellow-citizen. In this private prison, twelve ounces of rice were his daily food; he might be bound with a chain of fifteen pounds weight; and his misery was thrice exposed in the market-place, to solicit the compassion of his friends and countrymen. At the expiration of sixty days, the debt was discharged by the loss of liberty or life; the insolvent debtor was either put to death, or sold in foreign slavery beyond the Tiber; but if several creditors were alike obstinate and unrelenting, they might legally dismember his body, and satiate their revenge by this horrid partition. The advocates for this savage law have insisted, that it must strongly operate in deterring idleness and fraud from contracting debts which they were unable to discharge; but experience would dissipate this salutary terror, by proving, that no creditor could be found to exact this unprofitable penalty of life or limb. As the manners of Rome were insensibly polished, the criminal code of the decemvirs was abolished by the humanity of accusers, witnesses, and judges; and impunity became the consequence of immoderate rigour. The Porcian and Valerian laws prohibited the magistrates from inflicting on a free

* Brokersbeck (*Observat. Juris Rom.* l. 4. c. 1, in Opp. tom. 1. p. 9, 10, 11) labours to prove that the creditors divided out the body, but the *poies*, of the insolvent debtor. Yet his interpretation is an perpetual harsh metaphor; nor can he surmount the Roman authorities of Quintilian, Cælius, Favonius, and Tertullian. See *Antiq. Gellij*, Noct. Attic. 13.

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Abolition
or oblivion
of penal
laws.

citizen any capital, or even corporal, punishment; and the obsolete statutes of blood were artfully, and perhaps truly, ascribed to the spirit, not of patrician, but of regal, tyranny.

In the absence of penal laws and the insufficiency of civil actions, the peace and justice of the city were imperfectly maintained by the private jurisdiction of the citizens. The malefactors who replenish our gaols, are the outcasts of society, and the crimes for which they suffer may be commonly ascribed to ignorance, poverty, and brutal appetite. For the perpetration of similar enormities, a vile plebeian might claim and abuse the sacred character of a member of the republic; but on the proof or suspicion of guilt, the slave, or the stranger, was nailed to a cross, and this strict and summary justice might be exercised without restraint over the greatest part of the populace of Rome. Each family contained a domestic tribunal, which was not confined, like that of the pretor, to the cognizance of external actions: virtuous principles and habits were inculcated by the discipline of education; and the Roman father was accountable to the state for the manners of his children, since he disposed, without appeal, of their life, their liberty, and their inheritance. In some pressing emergencies, the citizen was authorized to avenge his private or public wrongs. The consent of the Jewish, the Athenian, and the Roman laws, approved the slaughter of the nocturnal thief; though in open day-light a robber could not be slain without

some previous evidence of danger and complaint. Whoever surprised an adulterer in his nuptial bed might freely exercise his revenge; the most bloody or wanton outrage was excused by the provocation; nor was it before the reign of Augustus that the husband was reduced to weigh the rank of the offender, or that the parent was condemned to sacrifice his daughter with her guilty seducer. After the expulsion of the kings, the ambitious Roman who should dare to assume their title, or imitate their tyranny, was devoted to the infernal gods: each of his fellow-citizens was armed with a sword of justice: and the act of Brutus, however repugnant to gratitude or prudence, had been already sanctified by the judgment of his country.* The barbarous practice of wearing arms in the midst of peace,† and the bloody maxims of honour, were unknown to

* The first speech of Lysias (Beliské, Orator. Græc. Lat. v, p. 3-45) is in defence of an husband who had killed the adulterer. The right of husbands and fathers at Rome and Athens is discussed with much learning by Dr. Taylor, *Discourses* (Lydam, c. 31, in Beliské, tom. vi, p. 301-308).

† See Cassiodorus ad Athenasum, l. i, c. 3, p. 19. *Percontant raphanice ungulaeque*, (Catull. p. 41, 42, edit. Vossian). *Hæc ungula intrat*, (Juvenal. Satir. x, 317). *Hunc permixtae calceæ* (Horat. l. i, Satir. ii, 44) *familia stuprum dedit*, . . . *strepit non sinit*. (Val. Maxim. l. vi, c. 1, N°. 13).

* This law is noticed by Livy, (l. vi, §1, and Plutarch, in *Publino*, tom. i, p. 187); and is fully justified the public opinion on the death of Caesar, which Sextus could publish under the imperial government. *Jure causæ existimatur*, (in *Julio*, c. 79). Read the letters that passed between Cicero and Marins a few months after the ides of March, (ed. Fam. xi, 37, 38).

† *Spæc. in Adonis re et calceæ arboribus*. Thucyd. l. i, c. 6. The historian who considers this circumstance as the test of civilization, would denude the barbarism of an European court.

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the Romans; and, during the two purest ages, from the establishment of equal freedom to the end of the Punic wars, the city was never disturbed by sedition, and rarely polluted with atrocious crimes. The failure of penal laws was more sensibly felt when every vice was inflamed by faction at home and dominion abroad. In the time of Cicero, each private citizen enjoyed the privilege of anarchy; each minister of the republic was exalted to the temptations of regal power, and their virtues are entitled to the warmest praise as the spontaneous fruits of nature or philosophy. After a triennial indulgence of lust, rapine, and cruelty, Verres, the tyrant of Sicily, could only be sued for the pecuniary restitution of three hundred thousand pounds sterling; and such was the temper of the laws, the judges, and perhaps the accuser himself,* that on refunding a thirteenth part of his plunder, Verres could retire to an easy and luxurious exile.

Restoration
of capital
punishments

The first imperfect attempt to restore the proportion of crimes and punishments, was made by the dictator Sylla, who, in the midst of his sanguinary triumph, aspired to restrain the license, rather than to oppress the liberty, of the Romans. He gloried in the arbitrary proscription of four

* He was tried at *ultra* (800,000) the *damages* of Sicily, (Dion. lib. 40 to Caecilium, c. 3), which he afterwards reduced to *quadragesies*, (120,000) — *L. Actio in Verrem*, c. 18, and was finally content with *duodecim* (12,000) *Flaccus* in Cicero. *Tom. III. p. 133*; has not dispensed the judicial process and report.

* Verres lived near thirty years after his trial, till the second triumvirate, when he was proscribed by the taste of Mark Antony for the sake of his *Calanthe* plate, (*Plin. Hist. Natur.* xxiv. 3).

thousand seven hundred citizens.* But in the character of a legislator, he respected the prejudices of the times; and instead of pronouncing a sentence of death against the robber or assassin, the general who betrayed an army, or the magistrate who ruined a province, Sylla was content to aggravate the pecuniary damages by the penalty of exile, or, in more constitutional language, by the interdiction of fire and water. The Cornelian, and afterwards the Pompeian and Julian laws, introduced a new system of criminal jurisprudence;† and the emperors, from Augustus to Justinian, disguised their increasing rigour under the names of the original authors. But the invention and frequent use of *extraordinary pains*, proceeded from the desire to extend and conceal the progress of despotism. In the condemnation of illustrious Romans, the senate was always prepared to confound, at the will of their masters, the judicial and legislative powers. It was the duty of the governors to maintain the peace of their province, by the arbitrary and rigid administration of justice; the freedom of the

* Such is the number assigned by Valerius Maximus, l. ix, c. 3, N. 1). Florus (iv, 21) distinguishes 2000 senators and knights; Appian (de Bell. Civil. l. i, c. 83, torn ii, p. 180, edit. Schweighauser) more accurately computes 40 victims of the senatorian rank, and 1900 of the equestrian census or order.

† For the penal law, (Lex Cornelia, Pompeia, Julia, of Sylla, Pompey, and the Cæsar), see the sentences of Paulus, l. iv, tit. xviii-xxx, p. 427-528, edit. Schulting; the Gregorian Code, (Fragment. l. xxi, p. 703, 708, in Schulting); the Collatio Legum Mosaicarum et Romanarum, (tit. i-xx); the Theodosian Code, l. ixi; the Code of Justinian, l. ix; the Pandects, (xviii); the Institutes, l. iv, tit. xviii, and the Greek version of Theophilus, (p. 917-935).

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city evaporated in the extent of empire, and the Spanish malefactor, who claimed the privilege of a Roman, was elevated by the command of Galba on a fairer and more lofty cross.\* Occasional rescripts issued from the throne to decide the questions, which, by their novelty or importance, appeared to surpass the authority and discernment of a proconsul. Transportation and beheading were reserved for honourable persons; meaner criminals were either hanged or burnt, or buried in the mines, or exposed to the wild beasts of the amphitheatre. Armed robbers were pursued and extirpated as the enemies of society; the driving away horses or cattle was made a capital offence;† but simple theft was uniformly considered as a mere civil and private injury. The degrees of guilt, and the modes of punishment, were too often determined by the discretion of the rulers, and the subject was left in ignorance of the legal danger which he might incur by every action of his life.

Measures of  
guilt.

A sin, a vice, a crime, are the objects of theology, ethics, and jurisprudence. Whenever their judgments agree, they corroborate each other; but

\* It was a guardian who had poisoned his ward. The crime was atrocious; yet the punishment is reckoned by Suetonius or, by naming the acts in which Galba showed himself ever voluminous, or by *delictis horrendis immodicis*.

† The abettors or abettors, who drove one horse, or two times or once, or five hogs, or two goats, were subject to capital punishment. (*Paul. Sentent. Recpt. l. iv. tit. xviii. p. 497, 498.*) Hadrian, 1st Council. Bantini, most severe when the offence was most frequent, condemned the criminals, *ad gladium*, *ad damnationem*, (*Ulpian, de Officio Proconsulis, l. vii. in Collatione Legum Moysi. et Rom. c. 1. p. 285.*)

as often as they differ, a prudent legislator appraises the guilt and punishment according to the measure of social injury. On this principle, the most daring attack on the life and property of a private citizen, is judged less atrocious than the crime of treason or rebellion, which invades the *majesty* of the republic: the obsequious civilians unanimously pronounced, that the republic is contained in the person of its chief: and the edge of the Julian law was sharpened by the incessant diligence of the emperors. The licentious commerce of the sexes may be tolerated as an impulse of nature, or forbidden as a source of disorder and corruption: but the fame, the fortunes, the family of the husband, are seriously injured by the adultery of the wife. The wisdom of Augustus, after curbing the freedom of revenge, applied to this domestic offence the animadversion of the laws: and the guilty parties, after the payment of heavy forfeitures and fines, were condemned to long or perpetual exile in two separate islands.\* Religion pronounces an equal censure against the infidelity of the husband: but as it is not accompanied by the same civil effects, the wife was never permitted to vindicate her wrongs;† and the distinction of simple

\* Till the publication of the *Fidus Publica* of Schelling, (l. ii. tit. xxvi. p. 317-323), it was asserted and believed, that the Julian laws punished adultery with death; and the distaste arose from the harshness or error of Tribonian. Yet Lipsius had suspected the truth from the narratives of Tacitus, (*Annal.* ii. 50; ii. 24; i. 48), and even from the practice of Augustus, who distinguished the transgressions of his female kindred.

† In cases of adultery, Severus confined to the husband the right of public accusation. (*Ulp. Jurat.* l. ix. tit. ix. leg. 1). Nor is

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vice.

or double adultery, so familiar and so important in the canon law, is unknown to the jurisprudence of the code and pandects. I touch with reluctance, and despatch with impatience, a more odious vice, of which modesty rejects the name, and nature abominates the idea. The primitive Romans were infected by the example of the Etruscans<sup>c</sup> and Greeks:<sup>d</sup> in the mad abuse of prosperity and power, every pleasure that is innocent was deemed insipid; and the Scatinian law,<sup>e</sup> which had been extorted by an act of violence, was insensibly abolished by the lapse of time and the multitude of criminals. By this law, the rape, perhaps the seduction, of an ingenuous youth, was compensated, as a personal injury, by the poor damages of ten thousand sesterces, or fourscore pounds; the ravisher might be slain by the resistance or revenge of chastity; and I wish to believe, that at Rome, as in Athens, the vo-

this privilege unjust—no different are the effects of male or female infidelity.

<sup>c</sup> Timon, (l. 9), and Theopompus (l. 2311) apud Athenæum, l. 10, p. 317, describe the luxury and lust of the Etruscans: *οὐκ ἔστιν οὐδὲν ἡμέτερον σπουδαιότερον τοῦ καὶ τῶν Εἰτωλικῶν καὶ περὶ τούτων*. About the same period, (A. U. C. 445), the Roman youth studied in Etruria, (Liv. ix. 36).

<sup>d</sup> The Persians had been corrupted in the same school: *οὐδ' Ἕλληνες παρ' αὐτοῖς μάτην παύσαντο*, (Herodot. l. i. c. 125). A curious dissertation might be formed on the introduction of pederasty after the time of Homer, its progress among the Greeks of Asia and Europe, the vehemence of their passions, and the thin device of virtue and friendship which amused the philosophers of Athens. But, *sceleris accendi oportet cum puniuntur, abscondi fugiunt*.

<sup>e</sup> The name, the date, and the provisions of this law, are equally doubtful, (Græcia. Opp. p. 432, 433. Hæroscius, Hist. Jur. Rom. N<sup>o</sup>. 108. Ernesti, Char. Cæsar. in Indiv. Legum). But I will observe that the *sophista Verus* of the honest German is styled *accusæ* by the more polite Italian.

luntary and effeminate deserter of his sex was degraded from the honours and the rights of a citizen.<sup>1</sup> But the practice of vice was not discouraged by the severity of opinion: the indelible stain of manhood was confounded with the more venial transgressions of fornication and adultery, nor was the licentious lover exposed to the same dishonour which he impressed on the male or female partner of his guilt. From Catullus to Juvenal,<sup>2</sup> the poets accuse and celebrate the degeneracy of the times, and the reformation of manners was feebly attempted by the reason and authority of the civilians, till the most virtuous of the Cæsars proscribed the sin against nature as a crime against society.<sup>3</sup>

A new spirit of legislation, respectable even in its error, arose in the empire with the religion of Constantine.<sup>4</sup> The laws of Moses were received as the divine original of justice, and the Christian princes adapted their penal statutes to the de-

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MARRIAGE

Signer of  
the Chris-  
tian cruce-  
raders.

<sup>1</sup> See the oration of Eschines against the extensive Timarchus, (in Reiske, *Orator. Græc. Rom.* iii. p. 21-184).

<sup>2</sup> A record of disgraceful passages will force themselves on the memory of the classic reader: I will only remind him of the cool declaration of Ovid—

*Odi simulacrum qui non utrimque resolvit.*

*Hæc est quid pudicitiam tangit amore vana.*

<sup>3</sup> Elion, Lampridius, in *Vit. Heliogabal.* in *Hist. August.* p. 113. Aurelius Victor, in Philippo, *Coelæ Throdæ* l. ix. tit. vii. leg. 7. and Godofroy's Commentary, tom. iii. p. 61. Theodosius abolished the subterraneous brothels of Rome, in which the prostitution of both sexes was acted with impunity.

<sup>4</sup> See the laws of Constantine and his successors against adultery, sodomy, &c. in the Theodosian d. ix. tit. vii. leg. 7. l. xi. tit. xxvi. leg. 1. 4. and Justinian Codes. (l. ix. tit. ix. leg. 20, 21). These princes speak the language of passion as well as of justice, and fraudulently ascribe their own severity to the first Cæsars.



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degrees of moral and religious turpitude. Adultery was first declared to be a capital offence; the frailty of the sexes was assimilated to poison or assassination, to sorcery or parricide; the same penalties were inflicted on the passive and active guilt of pederasty; and all criminals of free or servile condition were either drowned or beheaded, or cast alive into the avenging flames. The adulterers were spared by the common sympathy of mankind; but the lovers of their own sex were pursued by general and pious indignation; the impure manners of Greece still prevailed in the cities of Asia, and every vice was fomented by the celibacy of the monks and clergy. Justinian relaxed the punishment at least of female infidelity; the guilty spouse was only condemned to solitude and penance, and at the end of two years she might be recalled to the arms of a forgiving husband. But the same emperor declared himself the implacable enemy of unmanly lust, and the cruelty of his persecution can scarcely be excused by the purity of his motives.\* In defiance of every principle of justice, he stretched to past as well as future offences the operations of his edicts, with the previous allowance of a short respite for confession and pardon. A painful death was inflicted by the amputation of the sinful instrument, or the insertion of sharp reeds into the pores and tubes of most exquisite sensibility; and Justinian de-

\* Justinian. Novell. lxxviii. cxxxix. cccii. Procopius, in Anecdot. i. ii. 16, with the Notes of the Aldemanns. Theophanes, p. 181. Cedrenus, p. 368. Zonaras, l. xii. p. 64.

fended the propriety of the execution, since the criminals would have lost their hands, had they been convicted of sacrilege. In this state of disgrace and agony, two bishops, Isaiah of Rhodes, and Alexander of Diospolis, were dragged through the streets of Constantinople, while their brethren were admonished by the voice of a crier, to observe this awful lesson, and not to pollute the sanctity of their character. Perhaps these prelates were innocent. A sentence of death and infamy was often founded on the slight and suspicious evidence of a child or a servant; the guilt of the green faction, of the rich, and of the enemies of Theodora, was presumed by the judges, and pederasty became the crime of those to whom no crime could be imputed. A French philosopher<sup>2</sup> has dared to remark, that whatever is secret must be doubtful, and that our natural horror of vice may be abused as an engine of tyranny. But the favourable persuasion of the same writer, that a legislator may confide in the taste and reason of mankind, is impeached by the unwelcome discovery of the antiquity and extent of the disease.<sup>3</sup>

<sup>2</sup> Montesquieu, *Esprit des Loix*, l. vii, c. 6. That eloquent philosopher reconciles the rights of liberty and of nature, which should never be placed in opposition to each other.

<sup>3</sup> For the corruption of Palestine, 2000 years before the Christian era, see the history and laws of Moses. Ancient Gaul is stigmatized by *Herodotus Siculus*, tom. i, l. i, p. 336; China by the *Mohometan* and *Christian* travellers, (*Ancient relations of India and China*, p. 24, translated by *Benardot*, and his letter critic the *Père Prouve*, *Lectures Edifiantes*, tom. xix, p. 435), and *India Antiqua* by the Spanish historians, (*Garcilasso de la Vega*, l. iii, c. 12, *Byron's* translation); and *Antiquaire de Bayle*, tom. iii, p. 88. I believe, and hope, that the Romans, in their own country, were exempt from this moral pestilence.

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XLIV.Judgments  
of the  
people.

The free citizens of Athens and Rome enjoyed, in all criminal cases, the invaluable privilege of being tried by their country.\* 1. The administration of justice is the most ancient office of a prince: it was exercised by the Roman kings, and abused by Tarquin; who alone, without law or council, pronounced his arbitrary judgments. The first consuls succeeded to this regal prerogative; but the sacred right of appeal soon abolished the jurisdiction of the magistrates, and all public causes were decided by the supreme tribunal of the people. But a wild democracy, superior to the forms, too often disdains the essential principles, of justice: the pride of despotism was envenomed by plebeian envy, and the heroes of Athens might sometimes applaud the happiness of the Persian, whose fate depended on the caprice of a *single* tyrant. Some salutary restraints, imposed by the people on their own passions, were at once the cause and effect of the gravity and temperance of the Romans. The right of accusation was confined to the magistrates. A vote of the thirty-five tribes could inflict a fine: but the cognizance of all capital crimes was reserved by a fundamental law to the assembly of the centuries, in which the weight of influence and property was sure to pre-

\* The important subject of the public questions and judgments at Rome is explained with much learning, and in a classic style, by Charles Sigonius, (*l. iii. de Judiciis*, in *Opp.* tom. iii. 679-804); and a good abridgment may be found in the *Republique Romaine* of Heusinger, (*tom. ii. l. v. p. 1-121*). Those who wish for more abstruse law, may study Noodt, (*de Jurisdictione et Imperio Libri duo*, tom. i. p. 98-134); Humeccus, (*ad Pandect. l. i. et ii. ad Institut. l. iv. tit. xvii*); Element. *ad Antiquitat.*, and Gravina, (*Opp.* 230-231).

ponderate. Repeated proclamations and adjournments were interposed, to allow time for prejudice and resentment to subside; the whole proceeding might be annulled by a seasonable omen, or the opposition of a tribune; and such popular trials were commonly less formidable to innocence, than they were favourable to guilt. But this union of the judicial and legislative powers, left it doubtful whether the accused party was pardoned or acquitted: and in the defence of an illustrious client, the orators of Rome and Athens addressed their arguments to the policy and benevolence, as well as to the justice, of their sovereign. 2. The task of convening the citizens for the trial of each offender became more difficult, as the citizens and the offenders continually multiplied; and the ready expedient was adopted of delegating the jurisdiction of the people to the ordinary magistrates, or to extraordinary *inquisitors*. In the first ages these questions were rare and occasional. In the beginning of the seventh century of Rome they were made perpetual; four pretors were annually empowered to sit in judgment on the state offences of treason, extortion, peculation, and bribery; and Sylla added new pretors and new questions for those crimes which more directly injure the safety of individuals. By these *inquisitors* the trial was prepared and directed; but they could only pronounce the sentence of the majority of *judges*, who with some truth, and more prejudice, have been compared to the English juries.\* To discharge

Select  
judges

\* The office, both at Rome and in England, must be considered as an occasional duty, and not a magistracy or profession. But the obligation



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this important though burdensome office, an annual list of ancient and respectable citizens was formed by the pretor. After many constitutional struggles, they were chosen in equal numbers from the senate, the equestrian order, and the people; four hundred and fifty were appointed for single questions; and the various rolls or *decuries* of judges must have contained the names of some thousand Romans, who represented the judicial authority of the state. In each particular cause, a sufficient number was drawn from the urn; their integrity was guarded by an oath; the mode of ballot secured their independence; the suspicion of partiality was removed by the mutual challenges of the accuser and defendant: and the judges of Milo, by the retrenchment of fifteen on each side, were reduced to fifty-one voices or tablets, of acquittal, of condemnation, or of favourable doubt.<sup>1</sup> 3/ In his civil jurisdiction, the pretor of the city was truly a judge, and almost a legislator; but as soon as he had prescribed the action of law, he often referred to a delegate the determination of the fact. With the increase of legal proceedings, the tribunal of the centumvirs, in which he presided, acquired more weight and reputation. But whether he acted alone, or with the advice of his council, the most absolute powers might be

obligation of an unanimous verdict is peculiar to our laws, which condemn the jurymen to undergo the torture from whence they have exempted the criminal.

<sup>1</sup> We are indebted for this interesting hint to a fragment of Aconius Patianus, who flourished under the reign of Tiberius. The loss of his Commentaries on the Orations of Cicero has deprived us of a valuable fund of historical and legal knowledge.



trusted to a magistrate who was annually chosen by the votes of the people. The rules and precautions of freedom have required some explanation; the order of despotism is simple and unanimate. Before the age of Justinian, or perhaps of Diocletian, the decuries of Roman judges had sunk to an empty title; the humble advice of the assessors might be accepted or despised; and in each tribunal the civil and criminal jurisdiction was administered by a single magistrate, who was raised and disgraced by the will of the emperor.

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Assessors.

A Roman accused of any capital crime might prevent the sentence of the law by voluntary exile, or death. Till his guilt had been legally proved, his innocence was presumed, and his person was free; till the votes of the last *century* had been counted and declared, he might peaceably secede to any of the allied cities of Italy, or Greece, or Asia.\* His fame and fortunes were preserved, at least to his children, by this civil death; and he might still be happy in every rational and sensual enjoyment, if a mind accustomed to the ambitious tumult of Rome could support the uniformity and silence of Rhodes or Athens. A bolder effort was required to escape from the tyranny of the Cæsars; but this effort was rendered familiar by the maxims of the stoics, the example of the bravest Romans, and the legal encouragements of suicide. The bodies of condemned criminals were exposed to public ignominy, and their children, a more serious evil,

Voluntary  
exile and  
death.

\* Polyb. l. vi. p. 543. The extension of the empire and city of Rome, obliged the exile to seek a more distant place of retirement.

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.....

were reduced to poverty by the confiscation of their fortunes. But if the victims of Tiberius and Nero anticipated the decree of the prince or senate, their courage and despatch were recompensed by the applause of the public, the decent honours of burial, and the validity of their testaments.<sup>1</sup> The exquisite avarice and cruelty of Domitian appear to have deprived the unfortunate of this last consolation, and it was still denied even by the clemency of the Antonines. A voluntary death, which, in the case of a capital offence, intervened between the accusation and the sentence, was admitted as a confession of guilt, and the spoils of the deceased were seized by the inhuman claims of the treasury.<sup>2</sup> Yet the civilians have always respected the natural right of a citizen to dispose of his life; and the posthumous disgrace invented by Tarquin<sup>3</sup> to check the despair of his subjects, was never revived or imitated by succeeding tyrants. The powers of this world have indeed lost their dominion over him who is resolved on death; and his arm can only be restrained by the religious apprehension of a future state. *Suicides*

<sup>1</sup> *Qui de se statucent, huncscentur corpora, manebant testamentis; pretium festinantis.* Tacit. *Annal.* vi. 25, with the notes of Lipsius.

<sup>2</sup> Julius Paulus, (*Sentent. Recpt.* l. v. tit. xii. p. 476); the *Pandect.* G. xlviii. tit. xxi.; the *Code*, G. ix. tit. 17; *Synkretisch*, (tom. i. p. 22); *Observat. J. C. R.* iv. 4, and Montaigne, (*Essai des Loix*, l. xxi. c. 9), define the civil limitations of the liberty and privileges of suicide. The criminal penalties are the production of a later and darker age.

<sup>3</sup> *Phil. Hist. Natur.* xxxvi. 24. When he fatigued his subjects in building the Capitol, many of the labourers were provoked to despatch themselves; he nailed their dead bodies to crosses.

are enumerated by Virgil among the unfortunate, rather than the guilty;\* and the poetical fables of the infernal shades could not seriously influence the faith or practice of mankind. But the precepts of the gospel, or the church, have at length imposed a pious servitude on the minds of Christians, and condemn them to expect, without a murmur, the last stroke of disease or the executioner.

The penal statutes form a very small proportion of the sixty-two books of the code and pandects; and, in all judicial proceeding, the life or death of a citizen is determined with less caution and delay than the most ordinary question of covenant or inheritance. This singular distinction, though something may be allowed for the urgent necessity of defending the peace of society, is derived from the nature of criminal and civil jurisprudence. Our duties to the state are simple and uniform: the law by which he is condemned, is inscribed not only on brass or marble, but on the conscience of the offender, and his guilt is commonly proved by the testimony of a single fact. But our relations to each other are various and infinite: our obligations are created, annulled, and modified, by injuries, benefits, and promises; and the interpretation of voluntary contracts and testaments, which are often dictated by fraud or ignorance, affords a long and laborious exercise to the sagacity of the

Abuses in  
civil juris-  
prudence.

\* The sole resemblance of a violent and premature death has engaged Virgil (*Æneid*, vi. 434-439) to compare suicides with infants, lovers, and persons unjustly condemned. Heyne, the best of his editors, is at a loss to deduce the idea, or ascertain the jurisprudence, of the Roman poet.

judge. The business of life is multiplied by the extent of commerce and dominion, and the residence of the parties in the distant provinces of an empire, is productive of doubt, delay, and inevitable appeals from the local to the supreme magistrate. Justinian, the Greek emperor of Constantinople and the East, was the legal successor of the Latian shepherd who had planted a colony on the banks of the Tiber. In a period of thirteen hundred years, the laws had reluctantly followed the changes of government and manners; and the laudable desire of conciliating ancient names with recent institutions, destroyed the harmony, and swelled the magnitude, of the obscure and irregular system. The laws which excuse on any occasions the ignorance of their subjects, confess their own imperfections; the civil jurisprudence, as it was abridged by Justinian, still continued a mysterious science and a profitable trade, and the innate perplexity of the study was involved in tenfold darkness by the private industry of the practitioners. The expense of the pursuit sometimes exceeded the value of the prize, and the fairest rights were abandoned by the poverty or prudence of the claimants. Such costly justice might tend to abate the spirit of litigation, but the unequal pressure serves only to increase the influence of the rich, and to aggravate the misery of the poor. By these dilatory and expensive proceedings, the wealthy pleader obtains a more certain advantage than he could hope from the accidental corruption of his judge. The experience of an a-

base, from which our own age and country are not perfectly exempt, may sometimes provoke a generous indignation, and extort the hasty wish of exchanging our elaborate jurisprudence for the simple and summary decrees of a Turkish cadhi. Our calmer reflection will suggest, that such forms and delays are necessary to guard the person and property of the citizen: that the discretion of the judge is the first engine of tyranny, and that the laws of a free people should foresee and determine every question that may probably arise in the exercise of power and the transactions of industry. But the government of Justinian united the evils of liberty and servitude; and the Romans were oppressed at the same time by the multiplicity of their laws and the arbitrary will of their master.



## CHAP. XLV.

*Reign of the younger Justin—Embassy of the Avars—  
Their settlement on the Danube—Conquest of Italy by  
the Lombards—Adoption and reign of Tiberius—Of  
Maurice—State of Italy under the Lombards and the  
church—Of Ravenna—Distress of Rome—Character  
and pontificate of Gregory I.*

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Death of  
Justinian.  
A. D. 565,  
Nov. 14.

**D**URING the last years of Justinian, his infirm mind was devoted to heavenly contemplation, and he neglected the business of the lower world. His subjects were impatient of the long continuance of his life and reign: yet all who were capable of reflection, apprehended the moment of his death, which might involve the capital in tumult, and the empire in civil war. Seven nephews\* of the childless monarch, the sons or grandsons of his brother and sister, had been educated in the splendour of a princely fortune: they had been shown in high commands to the provinces and armies; their characters were known, their followers were zealous, and as the jealousy of age postponed the declaration of a successor, they might expect with equal hopes the inheritance of

\* See the family of Justin and Justinian in the *Familie Byzantine* of Ducas, p. 89-101. The devout civilians, Ludewig (on *Vit. Justinian.* p. 131) and Heineccius, (*Illus. Juris Roman.* p. 554), have since illustrated the genealogy of their favourite prince.

their uncle. He expired in his palace after a reign of thirty-eight years; and the decisive opportunity was embraced by the friends of Justin the son of Vigilantia.<sup>b</sup> At the hour of midnight, his domestics were awakened by an importunate crowd, who thundered at his door, and obtained admittance by revealing themselves to be the principal members of the senate. These welcome deputies announced the recent and momentous secret of the emperor's decease: reported, or perhaps invented, his dying choice of the best beloved and most deserving of his nephews, and conjured Justin to prevent the disorders of the multitude, if they should perceive, with the return of light, that they were left without a master. After composing his countenance to surprise, sorrow, and decent modesty, Justin, by the advice of his wife Sophia, submitted to the authority of the senate. He was conducted with speed and silence to the palace; the guards saluted their new sovereign, and the martial and religious rites of his coronation were diligently accomplished. By the hands of the proper officers he was invested with the imperial garments, the red buskins, white tunic, and purple robe. A fortunate soldier, whom he instantly promoted to the rank of tribune, encircled his neck with a military collar: four robust youths exalted him on a shield; he stood firm and erect to receive the adoration of his subjects;

<sup>b</sup> In the story of Justin's elevation I have translated into simple and common prose, the slight insulated verses of the two first books of Corippus, *De Laudibus Justin.* Appendix Hist. Byzant. p. 401. 414. Rome, 1777.



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Reign of  
Justin II.  
or the  
Younger,  
A. D. 563,  
Nov. 13—  
A. D. 574,  
December.

His con-  
sulate,  
A. D. 566,  
January 1.

and their choice was sanctified by the benediction of the patriarch, who imposed the diadem on the head of an orthodox prince. The hippodrome was already filled with innumerable multitudes; and no sooner did the emperor appear on his throne, than the voices of the blue and the green factions were confounded in the same loyal acclamations. In the speeches which Justin addressed to the senate and people, he promised to correct the abuses which had disgraced the age of his predecessor, displayed the maxims of a just and beneficent government, and declared, that on the approaching calends of January,\* he would revive in his own person the name and liberality of a Roman consul. The immediate discharge of his uncle's debts exhibited a solid pledge of his faith and generosity; a train of porters laden with bags of gold advanced into the midst of the hippodrome, and the hopeless creditors of Justinian accepted this equitable payment as a voluntary gift. Before the end of three years, his example was imitated and surpassed by the empress Sophia, who delivered many indigent citizens from the weight of debt and usury: an act of benevolence the best entitled to gratitude, since it relieves the most intolerable distress; but in which the bounty of a prince is the most liable to be abused by the claims of prodigality and fraud.†

\* It is surprising how Fasti Critici in Annot. Baron. tom. ii. p. 619, could be tempted by any chronicles to contradict the plain and decisive text of Corippus, *Virginiana*, l. ii. 344; *virgin dies*, l. iv. 13, and to postpone, till A. D. 567, the consulate of Justin.

† Theophanes Chronograph. p. 235. Whenever Calvois or Zaccaria are more transcribers, it is superfluous to allege their testimony.

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of the  
Avars.  
A. D. 568.

On the seventh day of his reign, Justin gave audience to the ambassadors of the Avars, and the scene was decorated to impress the barbarians with astonishment, veneration, and terror. From the palace-gate, the spacious courts and long porticoes were lined with the lofty crests and gilt bucklers of the guards, who presented their spears and axes with more confidence than they would have shewn in a field of battle. The officers who exercised the power, or attended the person, of the prince, were attired in their richest habits, and arranged according to the military and civil order of the hierarchy. When the veil of the sanctuary was withdrawn, the ambassadors beheld the emperor of the East on his throne, beneath a canopy or dome, which was supported by four columns, and crowned with a winged figure of victory. In the first emotions of surprise, they submitted to the servile adoration of the Byzantine court; but as soon as they rose from the ground, Targelius, the chief of the embassy, expressed the freedom and pride of a barbarian. He extolled, by the tongue of his interpreter, the greatness of the emperor, by whose clemency the kingdoms of the South were permitted to exist, whose victorious subjects had traversed the frozen rivers of Scythia, and who now covered the banks of the Danube with innumerable tents. The late emperor had cultivated, with annual and costly gifts, the friendship of a grateful monarch, and the enemies of Rome had respected the allies of the Avars. The same prudence would instruct the nephew of Justinian to imitate the liberality of his

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uncle, and to purchase the blessings of peace from an invincible people, who delighted and excelled in the exercise of war. The reply of the emperor was delivered in the same strain of haughty defiance, and he derived his confidence from the God of the Christians, the ancient glory of Rome, and the recent triumphs of Justinian. "The empire," said he, "abounds with men and horses, and arms sufficient to defend our frontiers, and to chastise the barbarians. You offer us aid, you threaten hostilities; we despise your enmity and your aid. The conquerors of the Avars solicit our alliance; shall we dread their fugitives and exiles?" The bounty of our uncle was granted to your misery, to your humble prayers. From us you shall receive a more important obligation, the knowledge of your own weakness. Retire from our presence; the lives of ambassadors are safe; and if you return to implore our pardon, perhaps you will taste of our benevolence." On the report of his ambassadors, the chagan was

\* *Corippus*, l. iii. 220. The *imperialis uirgo* seems to relate to the *Turks*, the conquerors of the Avars; but the word *uirgo* has no appropriate meaning, and the sole MS. of *Corippus*, from whence the first edition (1784), and *Poetae* was printed, is no longer viable. The last edition, *Fœderat. of Rome*, has inserted the conjectural emendation of *uoluer*; but the proofs of *Dionysius* (*Annal. l. c.*, *Dissect. xvi.*, p. 228-249) for the early use of this illa among the *Turks* and *Persians*, are weak and ambiguous. And I must refer to the authority of *d'Hacqueton*, (*His. des Turcs Orient. p. 215*), who ascribes the word to the *Arabic* and *Chaldean* languages, and the date to the beginning of the sixth century, when it was borrowed by the *Khalf of Bagdad* on Mahomed's return from *Garn*, and conquest of *India*.

† For these characteristic speeches, compare the verse of *Corippus* (l. iii. 221-222) with the poem of *Minasius*, (*Excerpt. Legation. p. 102, 103*). Their identity suggests that they do not copy each other, their resemblance, that they drew from a common original.



nawed by the apparent firmness of a Roman emperor, of whose character and resources he was ignorant. Instead of executing his threats against the eastern empire, he marched into the poor and savage countries of Germany, which were subject to the dominion of the Franks. After two doubtful battles, he consented to retire; and the Austrasian king relieved the distress of his camp with an immediate supply of corn and cattle.\* Such repeated disappointments had chilled the spirit of the Avars; and their power would have dissolved away in the Sarmatian desert, if the alliance of Alboin, king of the Lombards, had not given a new object to their arms, and a lasting settlement to their wearied fortunes.

While Alboin served under his father's standard, he encountered in battle, and transpierced with his lance, the rival prince of the Gepidae. The Lombards, who applauded such early progress, requested his father, with unanimous exclamations, that the heroic youth, who had shared the dangers of the field, might be admitted to the feast of victory: "You are not unmindful," replied the inflexible Ardoin, "of the wise customs of our ancestors. Whatever may be his merit, a prince is incapable of sitting at table with his father till he has received his arms from a foreign and royal hand." Alboin bowed with reverence to the institutions of his country; selected forty companions, and boldly visited the court of Turisund king of the Gepidae;

Alboin,  
King of  
the Lombards—  
his valour,  
love, and  
courage.

\* For the Austrasian war, see Memmian, (Excerpt. legat. p. 119); Gregory of Tours, (Hist. Franc. l. ii. c. 29); and Paul the deacon, (de Gest. Longobard. l. ii. c. 19).

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who embraced and entertained, according to the laws of hospitality, the murderer of his son. At the banquet, whilst Alboin occupied the seat of the youth whom he had slain, a tender remembrance arose in the mind of Turisund. "How dear is that place—how hateful is that person—" were the words that escaped, with a sigh, from the indignant father. His grief exasperated the national resentment of the Gepide; and Cunimund, his surviving son, was provoked by wine, or fraternal affection, to the desire of vengeance. "The Lombards," said the rude barbarian, "resemble, in figure and in smell, the mares of our Sarmatian plains." And this insult was a coarse allusion to the white bands which enveloped their legs. "Add another resemblance," replied an audacious Lombard; "you have felt how strongly they kick." Visit the plain of Asfeld, and seek for the bones of thy brother: they are mingled with those of the vilest animals." The Gepide, a nation of warriors, started from their seats, and the fearless Alboin, with his forty companions, laid their hands on their swords. The tumult was appeased by the venerable interposition of Turisund. He saved his own honour and the life of his guest: and after the solemn rites of investiture, dismissed the stranger in the bloody arms of his son; the gift of a weeping parent. Alboin returned in triumph; and the Lombards, who celebrated his matchless intrepidity, were compelled to praise the virtues of an enemy.<sup>3</sup> In

<sup>3</sup> Paul Wernersfeld: the deacon of Frim, de Gout. Lombard. l. 1, c. 23, 24. His pictures of national manners, though rudely sketched,

this extraordinary visit he had probably seen the daughter of Cunimund, who soon after ascended the throne of the Gepidæ. Her name was Rosamond, an appellation expressive of female beauty, and which our own history or romance has consecrated to amorous tales. The king of the Lombards (the father of Alboin no longer lived) was contracted to the grand-daughter of Clovis; but the restraints of faith and policy soon yielded to the hope of possessing the fair Rosamond, and of insulting her family and nation. The arts of persuasion were tried without success; and the impatient lover, by force and stratagem, obtained the object of his desires. War was the consequence which he foresaw and solicited; but the Lombards could not long withstand the furious assault of the Gepidæ, who were sustained by a Roman army. And as the offer of marriage was rejected with contempt, Alboin was compelled to relinquish his prey, and to partake of the disgrace which he had inflicted on the house of Cunimund.\*

When a public quarrel is envenomed by private injuries, a blow that is not mortal or decisive can be productive only of a short truce, which allows the unsuccessful combatant to sharpen his arms for a new encounter. The strength of Alboin had been found unequal to the gratification of his love, ambition, and revenge: he condescended to implore the formidable aid of the chagan; and the

The Lombards and Avars destroy the king and kingdom of the Gepidæ.  
A. D. 568.

are more lively and faithful than those of Boetius, or Gregory of Tours.

\* The story is told by an impostor, (Theophylact. Simocatta. l. vi. c. 10); but he had art enough to build his fiction on public and notorious facts.

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arguments that he employed are expressive of the art and policy of the barbarians. In the attack of the Gepidæ, he had been prompted by the just desire of extirpating a people whom their alliance with the Roman empire had rendered the common enemies of the nations, and the personal adversaries of the chagan. If the forces of the Avars and the Lombards should unite in this glorious quarrel, the victory was secure, and the reward inestimable: the Danube, the Helarus, Italy, and Constantinople, would be exposed, without a barrier, to their invincible arms. But if they hesitated or delayed to prevent the malice of the Romans, the same spirit which had insulted, would pursue the Avars to the extremity of the earth. These specious reasons were heard by the chagan with coldness and disdain: he detained the Lombard ambassadors in his camp, protracted the negotiation, and by turns alleged his want of inclination, or his want of ability, to undertake this important enterprise. At length he signified the ultimate price of his alliance, that the Lombards should immediately present him with the title of their cattle; that the spoils and captives should be equally divided; but that the lands of the Gepidæ should become the sole patrimony of the Avars. Such hard conditions were eagerly accepted by the passions of Alboin; and as the Romans were dissatisfied with the ingratitude and perfidy of the Gepidæ, Justin abandoned that incorrigible people to their fate, and remained the tranquil spectator of this unequal conflict. The despair of Cunimund was active and dangerous.

He was informed that the *Avars* had entered his confines; but on the strong assurance, that, after the defeat of the *Lombards*, these foreign invaders would easily be repelled, he rushed forwards to encounter the implacable enemy of his name and family. But the courage of the *Gepidæ* could secure them no more than an honourable death. The bravest of the nation fell in the field of battle; the king of the *Lombards* contemplated with delight the head of *Cunimund*; and his skull was fashioned into a cup, to satiate the hatred of the conqueror, or, perhaps, to comply with the savage custom of his country.<sup>1</sup> After this victory, no further obstacle could impede the progress of the confederates, and they faithfully executed the terms of their agreement.<sup>2</sup> The fair countries of *Walachia*, *Moldavia*, *Transylvania*, and the parts of *Hungary* beyond the *Danube*, were occupied, without resistance, by a new colony of *Seythians*; and the *Dacian* empire of the *chagans* subsisted with splendour above two hundred and thirty years. The nation of the *Gepidæ* was dissolved; but in the distribution of the captives, the slaves of the *Avars* were less fortunate than the companions of the *Lombards*, whose generosity adopted a valiant foe, and

<sup>1</sup> It appears from *Strabo*, *Pliny*, and *Ammianus Marcellinus*, that the same practice was common among the *Seythian* tribes, (*Muralori, Scythica Res. Italica*, tom. i. p. 429). The skulls of North America are likewise trophies of valor. The skull of *Cunimund* was preserved above two hundred years among the *Lombards*; and Paul himself was one of the guests to whom Duke *Rastislav* exhibited this cup on a high festival, (*ib. ii. c. 28*).

<sup>2</sup> *Paul*, l. i. c. 27. *Menander*, in *Excerpt. Leges*, p. 110, 111.



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whose freedom was incompatible with cool and deliberate tyranny. One moiety of the spoil introduced into the camp of Alboin more wealth than a barbarian could readily compute. The fair Rosamond was persuaded, or compelled, to acknowledge the rights of her victorious lover; and the daughter of Cunimund appeared to forgive those crimes which might be imputed to her own irresistible charms.

Alboin undertakes  
the conquest of  
Italy,  
A. D. 567.

The destruction of a mighty kingdom established the fame of Alboin. In the days of Charlemagne, the Bavarians, the Saxons, and the other tribes of the Teutonic language, still repeated the songs which described the heroic virtues, the valour, liberality, and fortune of the king of the Lombards.\* But his ambition was yet unsatisfied; and the conqueror of the Gepidæ turned his eyes from the Danube to the richer banks of the Po and the Tiber. Fifteen years had not elapsed, since his subjects, the confederates of Narses, had visited the pleasant climate of Italy: the mountains, the rivers, the highways, were familiar to their memory: the report of their success, perhaps the view of their spoils, had kindled in the

\* *Ut hæcenus etiam tam apud Bajuvarios gentem, quæ et Saxorum ac et alios ejusdem lingue homines . . . in eorum vocibus celebratur.* Paul, l. i. c. 21. He died A. D. 792. (*Monistori, in Prefat. tom. i. p. 297.*) These German songs, some of which might be as old as Tacitus, (*de Moribus Germ. c. 10.*) were compiled and transcribed by Charlemagne. *Barbara et antiquissima carmina, quibus veterum regum actus et bella constantiter scriptis memorisque mandavit, (Eginard, in Vit. Carol. Magn. c. 29, p. 120, 131).* The poems, which Goldast commends, (*Animadvers. ad Eginard, p. 297.*) appear to be recent and contemptible quotations.

rising generation the flame of emulation and enterprise. Their hopes were encouraged by the spirit and eloquence of Alboin; and it is affirmed, that he spoke to their senses, by producing, at the royal feast, the fairest and most exquisite fruits that grew spontaneously in the garden of the world. No sooner had he erected his standard, than the native strength of the Lombards was multiplied by the adventurous youth of Germany and Scythia. The robust peasantry of Noricum and Pannonia had resumed the manners of barbarians; and the names of the Gepide, Bulgarians, Sarmatians, and Bavarians, may be distinctly traced in the provinces of Italy.\* Of the Saxons, the old allies of the Lombards, twenty thousand warriors, with their wives and children, accepted the invitation of Alboin. Their bravery contributed to his success; but the accession or the absence of their numbers was not sensibly felt in the magnitude of his host. Every mode of religion was freely practised by its respective votaries. The king of the Lombards had been educated in the Arian heresy; but the catholics, in their public worship, were allowed to pray for his conversion; while the more stubborn barbarians sacrificed a she-goat, or perhaps a captive, to the gods of their fathers.† The Lombards, and their confederates, were united

\* The other nations are rehearsed by Paul, (l. ii. c. ii. 70). Misant (Antichità Italiane, tom. i. dissert. i. p. 4) has discovered the village of the Bavarians, three miles from Modena.

† Gregory the Roman (Dialog. l. iii. c. 27, 28, apud Baron. Annal. Eccles. A. D. 579, N°. 10) supposes that they likewise adored the she-goat. I know but of one religion in which the god and the victim are the same.

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tion and  
death of  
Narses.

by their common attachment to a chief, who excelled in all the virtues and vices of a savage hero; and the vigilance of Alboin provided an ample magazine of offensive and defensive arms for the use of the expedition. The portable wealth of the Lombards attended the march; their lands they cheerfully relinquished to the Avars, on the solemn promise, which was made and accepted without a smile, that if they failed in the conquest of Italy, these voluntary exiles should be reinstated in their former possessions.

They might have failed, if Narses had been the antagonist of the Lombards; and the veteran warriors, the associates of his Gothic victory, would have encountered with reluctance an enemy whom they dreaded and esteemed. But the weakness of the Byzantine court was subservient to the barbarian cause; and it was for the ruin of Italy, that the emperor once listened to the complaints of his subjects. The virtues of Narses were stained with avarice; and in his provincial reign of fifteen years he accumulated a treasure of gold and silver which surpassed the modesty of a private fortune. His government was oppressive or unpopular; and the general discontent was expressed with freedom by the deputies of Rome. Before the throne of Justin they boldly declared, that their Gothic servitude had been more tolerable than the despotism of a Greek eunuch; and that, unless their tyrant were instantly removed, they would consult their own happiness in the choice of a master. The apprehension of a revolt was urged by the voice of envy and detraction, which had so recently triumph-

ed over the merit of Belisarius. A new oxarch, Longinus, was appointed to supersede the conqueror of Italy; and the base motives of his recall were revealed in the insulting mandate of the empress Sophia, "that he should leave to *men* the exercise of arms, and return to his proper station among the maidens of the palace, where a distaff should be again placed in the hand of the eunuch." "I will spin her such a thread, as she shall not easily unravel!" is said to have been the reply which indignation and conscious virtue extorted from the hero. Instead of attending, a slave and a victim, at the gate of the Byzantine palace, he retired to Naples, from whence (if any credit is due to the belief of the times) Narses invited the Lombards to chastise the ingratitude of the prince and people.<sup>f</sup> But the passions of the people are furious and changeable; and the Romans soon recollected the merits, or dreaded the resentment, of their victorious general. By the mediation of the pope, who undertook a special pilgrimage to Naples, their repentance was accepted; and Narses, assuming a milder aspect and a more dutiful language, consented to fix his residence in the Capitol. His

<sup>f</sup> The charge of the desertion against Narses (l. v. c. 35) may be groundless; but the weak apology of the cardinal (Baron. *Annal. Eccles.* A. D. 567, N<sup>o</sup> 8. 12) is rejected by the best critics—Pagi, *Comm.* ii. p. 239, §10; Muratori, (*Annali d'Italia*, tom. v. p. 160-183), and the last editors, Harlæus Blaquen (*Script. Rerum Italicarum*, tom. i. p. 487, §26) and Philip Argelatan (*Byzant. Opera*, tom. ii. p. 11, §7). The Narses who assisted at the execution of Justin (Corippus, l. iii. 721), is clearly understood to be a different person.

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death,<sup>5</sup> though in the extreme period of old age, was unseasonable and premature, since *his* genius alone could have repaired the last and fatal error of his life. The reality, or the suspicion, of a conspiracy disarmed and disunited the Italians. The soldiers resented the disgrace, and bewailed the loss, of their general. They were ignorant of their new exarch; and Longinus was himself ignorant of the state of the army and the province. In the preceding years Italy had been desolated by pestilence and famine; and a disaffected people ascribed the calamities of nature, to the guilt or folly of their rulers.<sup>6</sup>

Conquest  
of a great  
part of  
Italy by  
the Lombards,  
A. D. 568-  
570.

Whatever might be the grounds of his security, Alboin neither expected nor encountered a Roman army in the field. He ascended the Julian Alps, and looked down with contempt and desire on the fruitful plains to which his victory communicated the perpetual appellation of *Lombardy*. A faithful chieftain, and a select band, were stationed at Forum Julii, the modern Friuli, to guard the passes of the mountains. The Lombards respected the strength of Pavia, and listened to the prayers of the Trevisans; their slow and heavy multitudes proceeded to occupy the palace and city of Verona;

<sup>5</sup> The death of Narces is mentioned by Paul. I. Hist. II. Agathas. in Vit. Julian. iii. p. 82; Agnellus, Liber Pontifical. Raven. in Script. Ber. Italianum, tom. ii. part. 1. p. 114, 124. Yet I cannot believe with Agnellus that Narces was ninety-five years of age. Is it probable that all his exploits were performed at fourscore?

<sup>6</sup> The designs of Narces and of the Lombards for the invasion of Italy, are exposed in the last chapter of the first book, and the worst last chapters of the second book, of Paul the Deacon.



and Milan, now rising from her ashes, was invested by the powers of Alboin five months after his departure from Pannonia. Terror preceded his march; he found everywhere, or he left, a dreary solitude; and the pusillanimous Italians presumed, without a trial, that the stranger was invincible. Escaping to lakes, or rocks, or morasses, the affrighted crowds concealed some fragments of their wealth, and delayed the moment of their servitude. Paulinus, the patriarch of Aquileia, removed his treasures, sacred and profane, to the isle of Grado,\* and his successors were adopted by the infant republic of Venice, which was continually enriched by the public calamities. Honoratus, who filled the chair of St. Ambrose, had credulously accepted the faithless offers of a capitulation; and the archbishop, with the clergy and nobles of Milan, were driven by the perfidy of Alboin to seek a refuge in the less accessible ramparts of Genoa. Along the maritime coast, the courage of the inhabitants was supported by the facility of supply, the hopes of relief, and the power of escape; but from the Trentine hills to the gates of Ravenna and Rome, the inland regions of Italy became, without a battle or a siege, the lasting patrimony of the Lombards. The submission of the people invited the

\* Which from this translation was called New Aquileia. (Chron. Venet. p. 3). The patriarch of Grado soon became the first citizen of the republic. (p. 9, &c.), but his seat was not removed to Venice till the year 1430. He is now decorated with titles and honours; but the genius of the church has bowed to that of the state, and the government of a catholic city is strictly presbyterian. Thomassin, *Discipline de l'Eglise*, tom. i, p. 156, 157, 161-165. *Année de la République, Gouvernement de Venise*, tom. i, p. 246-251.

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barbarian to assume the character of a lawful sovereign, and the helpless exarch was confined to the office of announcing to the emperor Justin, the rapid and irretrievable loss of his provinces and cities. One city, which had been diligently fortified by the Goths, resisted the arms of a new invader; and while Italy was subdued by the flying detachments of the Lombards, the royal camp was fixed above three years before the western gate of Ticinum, or Pavia. The same courage which obtains the esteem of a civilized enemy, provokes the fury of a savage, and the impatient besieger had bound himself by a tremendous oath, that age, and sex, and dignity, should be confounded in a general massacre. The aid of famine at length enabled him to execute his bloody vow: but as Alboin entered the gate, his horse stumbled, fell; and could not be raised from the ground. One of his attendants was prompted by compassion, or piety, to interpret this miraculous sign of the wrath of heaven: the conqueror paused and relented: he sheathed his sword, and, peacefully reposing himself in the palace of Theodoric, proclaimed to the trembling multitude, that they should live and obey. Delighted with the situation of a city, which was endeared to his pride by the difficulty of the purchase, the prince of the Lombards disdained the ancient glories of Milan; and Pavia, during

Paul has given a description of Italy, as it was then divided, into eighteen regions, *ib. l. c.* 14-24. The *Déscription Chronographique de l'Italie* *Mons. Sivi*, by Father Beretti, a Benedictine monk, and regius professor at Pavia, has been usefully consulted.

some ages was respected as the capital of the kingdom of Italy.\*

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Alboin is  
murdered  
by his wife  
Rosamond,  
A. D. 573,  
June 29.

The reign of the founder was splendid and transient; and before he could regulate his new conquests, Alboin fell a sacrifice to domestic treason and female revenge. In a palace near Verona, which had not been erected for the barbarians, he feasted the companions of his arms; intoxication was the reward of valour, and the king himself was tempted by appetite, or vanity, to exceed the ordinary measure of his intemperance. After draining many capacious bowls of Rhetian or Falerian wine, he called for the skull of Cunnund, the noblest and most precious ornament of his side-board. The cup of victory was accepted with horrid applause by the circle of the Lombard chiefs. "Fill it again with wine," exclaimed the inhuman conqueror, "fill it to the brim; carry this goblet to the queen, and request in my name that she would rejoice with her father." In an agony of grief and rage, Rosamond had strength to utter, "Let the will of my lord be obeyed!" and touching it with her lips, pronounced a silent imprecation, that the insult should be washed away in the blood of Alboin. Some indulgence might be due to the resentment of a daughter, if she had not already violated the duties of a wife. Implacable in her enmity, or inconstant in her love, the

\* For the conquest of Italy, see the original materials of Fied, G. H. v. 7-10, 12, 14, 25, 26, 27; the eloquent narrative of Sigisbert, (tom. 8, *de Regna Italia*, l. 3, p. 12-13); and the correct and critical review of Muratori, (*Annali d'Italia*, tom. 5, p. 164-166).

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queen of Italy had stooped from the throne to the arms of a subject, and Helmichis, the king's armour-bearer, was the secret minister of her pleasure and revenge. Against the proposal of the murder, he could no longer urge the scruples of fidelity or gratitude; but Helmichis trembled, when he revolved the danger as well as the guilt, when he recollected the matchless strength and intrepidity of a warrior, whom he had so often attended in the field of battle. He pressed and obtained, that one of the bravest champions of the Lombards should be associated to the enterprise; but no more than a promise of secrecy could be drawn from the gallant Peredeus; and the mode of seduction employed by Rosamond betrays her shameless insensibility both to honour and love. She supplied the place of one of her female attendants who was beloved by Peredeus, and contrived some excuse for darkness and silence, till she could inform her companion that he had enjoyed the queen of the Lombards, and that his own death, or the death of Alboin, must be the consequence of such treasonable adultery. In this alternative, he chose rather to be the accomplice than the victim of Rosamond,\* whose unhaunted spirit was incapable of fear or remorse. She expected, and soon found, a favourable moment, when the king,

\* The classical reader will recollect the wife and murder of Candaules, so agreeably told in the first book of Herodotus. The choice of Egypt, as a scene where negroes may serve as the victims of Peredeus, and the soft insinuation of an odious idea has been limited by the best writers of antiquity. (Griecus, c. 2. Ciceron. Quint. pro Milone, v. 10.)



oppressed with wine, had retired from the table to his afternoon slumbers. His faithless spouse was anxious for his health and repose: the gates of the palace were shut, the arms removed, the attendants dismissed, and Rosamond, after lulling him to rest by her tender caresses, unbolted the chamber-door, and urged the reluctant conspirators to the instant execution of the deed. On the first alarm, the warrior started from his couch; his sword, which he attempted to draw, had been fastened to the scabbard by the hand of Rosamond; and a small stool, his only weapon, could not long protect him from the spears of the assassins. The daughter of Cunimund smiled in his fall; his body was buried under the staircase of the palace, and the grateful posterity of the Lombards revered the tomb and the memory of their victorious leader.

The ambitious Rosamond aspired to reign in the name of her lover; the city and palace of Verona were awed by her power, and a faithful band of her native Gepidae was prepared to applaud the revenge, and to second the wishes, of their sovereign. But the Lombard chiefs, who fled in the first moments of consternation and disorder, had resumed their courage and collected their powers; and the nation, instead of submitting to her reign, demanded, with unanimous cries, that justice should be executed on the guilty spouse and the murderers of their king. She sought a refuge among the enemies of her country, and a criminal who deserved the abhorrence of mankind was protected by the selfish policy of the exarch. With her

Her flight  
and death.



CHAP. daughter, the heiress of the Lombard throne, her  
 XLV. two lovers, her trusty Gepidæ, and the spoils of  
 the palace of Verona, Rosamond descended the  
 Adige and the Po, and was transported by a  
 Greek vessel to the safe harbour of Ravenna.  
 Longinus beheld with delight the charms and the  
 treasures of the widow of Alboin: her situation  
 and her past conduct might justify the most licen-  
 tious proposals; and she readily listened to the  
 passion of a minister, who even in the decline  
 of the empire, was respected as the equal of  
 kings. The death of a jealous lover was an easy  
 and grateful sacrifice, and as Helmichis issued  
 from the bath, he received the deadly potion  
 from the hand of his mistress. The taste of the  
 liquor, its speedy operation, and his experience  
 of the character of Rosamond, convinced him  
 that he was poisoned: he pointed his dagger to  
 her breast, compelled her to drain the remain-  
 der of the cup, and expired in a few minutes,  
 with the consolation that she could not survive to  
 enjoy the fruits of her wickedness. The daughter  
 of Alboin and Rosamond, with the richest spoils  
 of the Lombards, was embarked for Constantin-  
 ople; the surprising strength of Perseus amu-  
 sed and terrified the imperial court: his blind-  
 ness and revenge exhibited an imperfect copy  
 of the adventures of Sampson. By the free suf-  
 frage of the nation, in the assembly of Pavia, Cle-  
 pho, one of their noblest chiefs, was elected as the  
 successor of Alboin. Before the end of eighteen  
 months, the throne was polluted by a second mur-  
 der; Clepho was stabbed by the hand of a domestic;

Clepho,  
 king of the  
 Lombards,  
 A. D. 570,  
 August.

the regal office was suspended above ten years, during the minority of his son Autharis; and Italy was divided and oppressed by a ducal aristocracy of thirty tyrants.<sup>2</sup> CHAP.  
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When the nephew of Justinian ascended the throne, he proclaimed a new era of happiness and glory. The annals of the second Justin³ are marked with disgrace abroad and misery at home. In the West the Roman empire was afflicted by the loss of Italy, the desolation of Africa, and the conquests of the Persians. Injustice prevailed both in the capital and the provinces; the rich trembled for their property, the poor for their safety, the ordinary magistrates were ignorant or venal, the occasional remedies appear to have been arbitrary and violent, and the complaints of the people could no longer be silenced by the splendid names of a legislator and a conqueror. The opinion which imputes to the prince all the calamities of his times, may be countenanced by the historian as a serious truth or a salutary prejudice. Yet a candid suspicion will arise, that the sentiments of Justin were pure and benevolent, and that he might have filled his station without reproach, if the faculties of his mind had not been impaired by disease, which deprived the emperor of the use of Weakness
of the em-
peror Jus-
tinian.

² See the history of Paul, i. 6, c. 28-34. I have borrowed some interesting circumstances from the *Uxor Pontificis de Agnellis*, in Script. Ber. Ital. tom. ii. p. 124. Of all chronologist guides, Muratori is the safest.

³ The original authors for the reign of Justin the Younger, are Evagrius, *Hist. Eccl.* l. vi. c. 1-12; Theophanes, in *Chronograph.* p. 204-210; Zonares, tom. ii. l. xlv. p. 70-72; Cedrenus, in *Compend.* p. 288-292.

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his feet, and confined him to the palace, a stranger to the complaints of the people and the views of the government. The tardy knowledge of his own impotence determined him to lay down the weight of the diadem; and in the choice of a worthy substitute, he showed some symptoms of a discerning and even magnanimous spirit. The only son of Justin and Sophia died in his infancy: their daughter Arabia was the wife of Baduarius,* superintendant of the palace, and afterwards commander of the Italian armies, who vainly aspired to confirm the rights of marriage by those of adoption. While the empire appeared an object of desire, Justin was accustomed to behold with jealousy and hatred his brothers and cousins, the rivals of his hopes; nor could he depend on the gratitude of those who would accept the purple as a restitution, rather than a gift. Of these competitors, one had been removed by exile, and afterwards by death; and the emperor himself had inflicted such cruel insults on another, that he must either dread his resentment or despise his patience. This domestic animosity was refined into a generous resolution of seeking a successor, not in his family, but in the republic: and the artful Sophia recommended Ti-

* *Dispositusque necesse erat Baduarius palat.*

Successor secreti necesse fuit Cæsar palat.

Callippos.

Baduarius is flourished among the descendants and allies of the house of Justinian. A family of noble Venetians (*Casa Zuchery*) built churches and gave alms to the republic as early as the fifth century; and if this descent be admitted, no kings in Europe can produce a pedigree so ancient and illustrious. *Houssay, Fam. Byzantine* p. 90. *Annales de la République, Gouvernement de Venise*, tom. II, p. 255.

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XLV.
Asses-
sion of
Tiberius,
A. D. 274,
December.

berius," his faithful captain of the guards, whose virtues and fortune the emperor might cherish as the fruit of his judicious choice. The ceremony of his elevation to the rank of *Cæsar* or *Augustus*, was performed in the portico of the palace, in the presence of the patriarch and the senate. Justin collected the remaining strength of his mind and body, but the popular belief that his speech was inspired by the Deity, betrays a very humble opinion both of the man and of the times.—“You behold,” said the emperor, “the ensigns of supreme power. You are about to receive them not from my hand, but from the hand of God. Honour them, and from them you will derive honour. Respect the empress your mother; you are now her son; before, you were her servant. Delight not in blood. Abstain from revenge, avoid those actions by which I have incurred the public hatred, and consult the experience rather than the example of your predecessor. As a man, I have sinned; as a sinner, even in this life I have been severely punished; but these servants (and he pointed to his ministers) who have abused my confidence, and inflamed my passions, will appear with me before the tribunal

* The prince bestowed his glances before their sentences, in the private and most weighty. *Compellat* has collected *Tiberius* at the time of the accession of *Justin*, (l. i. 212-222). Yet even a captain of the guards might attract the notice of an African exile.

* *Evangelia* (l. v. c. 15) has added the reproach to his ministers. He applies this speech to the ceremony when *Tiberius* was invested with the rank of *Cæsar*. The same expression, rather than the positive error, of *Theophrastus*, &c. has delayed it to his *Agrippa* investiture immediately before the death of *Justin*.

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" of Christ. I have been dazzled by the
" splendour of the diadem: be thou wise and
" modest; remember what you have been, re-
" member what you are. You see around us
" your slaves and your children; with the author-
" ity, assume the tenderness, of a parent. Love
" your people like yourself; cultivate the affec-
" tions, maintain the discipline, of the army:
" protect the fortunes of the rich, relieve the ne-
" cessities of the poor."* The assembly, in si-
lence and in tears, applauded the counsels, and
sympathised with the repentance, of their prince:
the patriarch rehearsed the prayers of the church;
Tiberius received the diadem on his knees, and
Justin, who in his abdication appeared most
worthy to reign, addressed the new monarch in
the following words—" If you consent, I live:
" If you command, I die: may the God of hea-
" ven and earth infuse into your heart whatever
" I have neglected or forgotten." The four last
years of the emperor Justin were passed in trans-
parent obscurity: his conscience was no longer tor-
mented by the remembrance of those duties
which he was incapable of discharging; and his
choice was justified by the filial reverence and
gratitude of Tiberius.

Death of
Justin II.
A. D. 578.
Byronic

Reign of
Tiberius
II.

Among the virtues of Tiberius, his beauty
(he was one of the tallest and most comely of the

* Theophylact Simocatta O. iii. c. 14) declares that he shall give
to posterity the speech of Justin as it was pronounced, without at-
tempting to correct the imperfections of language or rhetoric. Per-
haps the vain sophist would have been incapable of producing such
sentiments.

* For the character and reign of Tiberius, see Eusebius, l. v.
c. 13; Theophylact, l. iii. c. 12, &c.; Theophanes, in Chron.
p. 110-

Romans) might introduce him to the favour of Sophia; and the widow of Justin was persuaded, that she should preserve her station and influence under the reign of a second and more youthful husband. But if the ambitious candidate had been tempted to flatter and dissemble, it was no longer in his power to fulfil her expectations, or his own promise. The factions of the hippodrome demanded, with some impatience, the name of their new empress; both the people and Sophia were astonished by the proclamation of Anastasia, the secret, though lawful, wife of the emperor Tiberius. Whatever could alleviate the disappointment of Sophia, imperial honours, a stately palace, a numerous household, was liberally bestowed by the piety of her adopted son; on solemn occasions he attended and consulted the widow of his benefactor; but her ambition disdained the vain semblance of royalty, and the respectful appellation of mother served to exasperate, rather than appease, the rage of an injured woman. While she accepted, and repaid with a courtly smile, the fair expressions of regard and confidence, a secret alliance was concluded between the dowager empress and her ancient enemies; and Justinian, the son of Germanus, was employed as the instrument of her revenge. The pride of the reigning house supported, with reluctance, the dominion of a stranger: the youth was deservedly popular; his name,

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A. D. 528.

Sept. 36.

A. D. 527.

Aug. 14.

p. 216-217; Zaccaria, tom. ii. l. xiv. p. 77; Codrussi, p. 392; Paul Warneford, de Græc. Lang. lib. i. c. 11, 12. The emperor of Rome still appears to have possessed some curious and authentic facts.

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after the death of Justin, had been mentioned by a tumultuous faction; and his own submissive offer of his head, with a treasure of sixty thousand pounds, might be interpreted as an evidence of guilt, or at least of fear. Justinian received a free pardon, and the command of the eastern army. The Persian monarch fled before his arms; and the acclamations which accompanied his triumph declared him worthy of the purple. His artful patroness had chosen the month of the vintage, while the emperor, in a rural solitude, was permitted to enjoy the pleasures of a subject. On the first intelligence of her designs he returned to Constantinople, and the conspiracy was suppressed by his presence and firmness. From the pomp and honours which she had abused, Sophia was reduced to a modest allowance: Tiberius dismissed her train, intercepted her correspondence, and committed to a faithful guard the custody of her person. But the services of Justinian were not considered by that excellent prince as an aggravation of his offences; after a mild reproof, his treason and ingratitude were forgiven, and it was commonly believed, that the emperor entertained some thoughts of contracting a double alliance with the rival of his throne. The voice of an angel (such a fable was propagated) might reveal to the emperor, that he should always triumph over his domestic foes; but Tiberius derived a firmer assurance from the innocence and generosity of his own mind.

With the odious name of Tiberius, he assumed the more popular appellation of Constantine, and

imitated the purer virtues of the Antonines. After recording the vice or folly of so many Roman princes, it is pleasing to repose, for a moment, on a character conspicuous by the qualities of humanity, justice, temperance, and fortitude; to contemplate a sovereign affable in his palace, pious in the church, impartial on the seat of judgment, and victorious, at least by his generals, in the Persian war. The most glorious trophy of his victory consisted in a multitude of captives whom Tiberius entertained, redeemed, and dismissed to their native homes with the charitable spirit of a Christian hero. The merit or misfortunes of his own subjects had a dearer claim to his beneficence, and he measured his bounty not so much by their expectations as by his own dignity. This maxim, however dangerous in a trustee of the public wealth, was balanced by a principle of humanity and justice, which taught him to abhor, as of the basest alloy, the gold that was extracted from the tears of the people. For their relief, as often as they had suffered by natural or hostile calamities, he was impatient to remit the arrears of the past, or the demands of future taxes: he sternly rejected the servile offerings of his ministers, which were compensated by tenfold oppression; and the wise and equitable laws of Tiberius excited the praise and regret of succeeding times. Constantinople believed that the emperor had discovered a treasure: but his genuine treasure consisted in the practice of liberal economy, and the contempt of all vain and superfluous expence. The Romans of the East would have been happy, if the best gift of

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heaven, a patriot king, had been confirmed as a proper and permanent blessing. But in less than four years after the death of Justin, his worthy successor sunk into a mortal disease, which left him only sufficient time to restore the diadem, according to the tenure by which he held it, to the most deserving of his fellow-citizens. He selected Maurice from the crowd, a judgment more precious than the purple itself: the patriarch and senate were summoned to the bed of the dying prince; he bestowed his daughter and the empire; and his last advice was solemnly delivered by the voice of the questor. Tiberius expressed his hope, that the virtues of his son and successor would erect the noblest mausoleum to his memory. His memory was embalmed by the public affliction; but the most sincere grief evaporates in the tumult of a new reign, and the eyes and acclamations of mankind were speedily directed to the rising sun.

The reign
of Maurice.
Nov.
A. D. 582,
Aug. 13—
A. D. 602,
Nov. 27.

The emperor Maurice derived his origin from ancient Rome;¹ but his immediate parents were settled at Arabissus in Cappadocia, and their singular felicity preserved them alive to behold and partake the fortune of their *august* son. The youth of Maurice was spent in the profession of arms; Tiberius promoted him to the command of a new and favourite legion of twelve thousand confede-

¹ It is therefore singular enough that Paul (i. iii. c. lvi) should distinguish him as the first Greek emperor—*primum ex Graecorum genere in imperio constitutum*. His immediate predecessors had indeed been born in the Latin provinces of Europe; and a various grading, in *Germanorum imperia*, would apply the expression to the empire rather than the prince.

rares; his valour and conduct were signalized in the Persian war; and he returned to Constantinople to accept, as his just reward, the inheritance of the empire. Maurice ascended the throne at the mature age of forty-three years; and he reigned above twenty years over the East and over himself;* expelling from his mind the wild democracy of passions, and establishing (according to the quaint expression of Evagrius) a perfect aristocracy of reason and virtue. Some suspicion will degrade the testimony of a subject, though he protests that his secret praise should never reach the ear of his sovereign,³ and some failings seem to place the character of Maurice below the purer merit of his predecessor. His cold and reserved demeanour might be imputed to arrogance; his justice was not always exempt from cruelty, nor his clemency from weakness; and his rigid economy too often exposed him to the reproach of avarice. But the rational wishes of an absolute monarch must tend to the happiness of his people; Maurice was endowed with sense and courage to promote that happiness, and his administration was directed by the principles and example of Tiberius. The pusillanimity of the Greeks had introduced so complete a separa-

* Consult, for the character and reign of Maurice, the 6th and 6th books of Evagrius, particularly l. vi. c. 1; the eighth book of his *poetici* and third history by Theophylact Simocatta; Theophanes, p. 213, 221; Komnenus, *l. iv.* c. xiv. p. 171; *Evagrius*, p. 104.

³ *ἡ ἀσφάλεια τοῦ ψυχικοῦ τοῦ πνεύματος καὶ τοῦ σώματος καὶ τοῦ σώματος καὶ τοῦ σώματος* Evagrius composed his history in the twelfth year of Maurice; and he had been so wisely instructed, that the emperor knew and corrected his favourable opinion, (l. vi. c. 21).

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tion between the offices of king and of general, that a private soldier who had deserved and obtained the purple, seldom or never appeared at the head of his armies. Yet the emperor Maurice enjoyed the glory of restoring the Persian monarch to his throne: his lieutenants waged a doubtful war against the Avars of the Danube, and he cast an eye of pity, of ineffectual pity, on the abject and distressful state of his Italian provinces.

Descent of
Italy.

From Italy the emperors were incessantly tormented by tales of misery and demands of succour, which extorted the humiliating confession of their own weakness. The expiring dignity of Rome was only marked by the freedom and energy of her complaints. "If you are incapable," she said, "of delivering us from the sword of the Lombards, save us at least from the calamity of famine." Tiberius forgave the reproach, and relieved the distress: a supply of corn was transported from Egypt to the Tiber; and the Roman people, invoking the name, not of Camillus, but of St. Peter, repulsed the barbarians from their walls. But the relief was accidental, the danger was perpetual and pressing: and the clergy and senate, collecting the remains of their ancient opulence, a sum of three thousand pounds of gold, despatched the patrician Pamphronius to lay their gifts and their complaints at the foot of the Byzantine throne. The attentions of the court, and the forces of the East, were diverted by the Persian war; but the justice of Tiberius applied the subsidy to the defence of the city: and he dismissed

the patrician, with his best advice, either to bribe the Lombard chiefs, or to purchase the aid of the kings of France. Notwithstanding this weak invention, Italy was still afflicted, Rome was again besieged, and the suburb of Classe, only three miles from Ravenna, was pillaged and occupied by the troops of a simple duke of Spoleto. Maurice gave audience to a second deputation of priests and senators; the duties and the menaces of religion were forcibly urged in the letters of the Roman pontiff; and his nuncio, the deacon Gregory, was alike qualified to solicit the powers either of heaven or of the earth. The emperor adopted, with stronger effect, the measures of his predecessor; some formidable chiefs were persuaded to embrace the friendship of the Romans; and one of them, a mild and faithful barbarian, lived and died in the service of the exarch; the passes of the Alps were delivered to the Franks; and the pope encouraged them to violate, without scruple, their oaths and engagements to the misbelievers. Childebert, the great-grandson of Clovis, was persuaded to invade Italy by the payment of fifty thousand pieces; but as he had viewed with delight some Byzantine coin of the weight of one pound of gold, the king of Austrasia might stipulate, that the gift should be rendered more worthy of his acceptance, by a proper mixture of these respectable medals. The dukes of the Lombards had provoked by frequent inroads their powerful neighbours of Gaul. As soon as they were apprehensive of a just retaliation, they renounced their feeble and disorderly independ-

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Autharis,
King of
the Lombards,
A. D. 584-
590.

once; the advantages of regal government, union, secrecy, and vigour, were unanimously confessed; and Autharis, the son of Clepho, had already attained the strength and reputation of a warrior. Under the standard of their new king, the conquerors of Italy withstood three successive invasions, one of which was led by Childbert himself, the last of the Merovingian race who descended from the Alps. The first expedition was defeated by the jealous animosity of the Franks and Alemanni. In the second they were vanquished in a bloody battle, with more loss and dishonour than they had sustained since the foundation of their monarchy. Impatient for revenge, they returned a third time with accumulated force, and Autharis yielded to the fury of the torrent. The troops and treasures of the Lombards were distributed in the walled towns between the Alps and the Apennine. A nation, less sensible of danger, than of fatigue and delay, soon murmured against the folly of their twenty commanders; and the hot vapours of an Italian sun infected with disease those traitorous bodies which had already suffered the vicissitudes of intemperance and famine. The powers that were inadequate to the conquest, were more than sufficient for the desolation of the country; nor could the trembling natives distinguish between their enemies and their deliverers. If the junction of the Merovingian and imperial forces had been effected in the neighbourhood of Milan, perhaps they might have subverted the throne of the Lombards; but the Franks expected six days the signal

of a flaming village, and the arms of the Greeks were idly employed in the reduction of Modena and Parma, which were torn from them after the retreat of their Transalpine allies. The victorious Autharis asserted his claim to the dominion of Italy. At the foot of the Rhaetian Alps, he subdued the resistance, and rifled the hidden treasures, of a sequestered island in the lake of Como. At the extreme point of Calabria, he touched with his spear a column on the sea-shore of Rhegium,¹ proclaiming that ancient land-mark to stand the immovable boundary of his kingdom.²

During a period of two hundred years, Italy was unequally divided between the kingdom of the Lombards and the exarchate of Ravenna. The offices and professions, which the jealousy of Constantine had separated, were united by the indulgence of Justinian; and eighteen successive exarchs were invested in the decline of the empire, with the full remains of civil, of military, and even of ecclesiastical power. Their immediate jurisdiction, which was afterwards consecrated as the patrimony of St. Peter, extended over the modern Romagna, the marshes or

The ex-
archate of
Ravenna.

¹ The Calabrum Rhegium, in the narrowest part of the Faro of Messina, one hundred stadia from Rhegium itself, is frequently mentioned in ancient geography. *Cicero, Nat. Arat.* tom. ii. p. 1293. *Lucius Holsten. Annotat. ad Cluver.* p. 361. *Wesseling. Itinerar.* p. 106.

² The Greek historians afford some faint ideas of the wars of Italy. (*Menander.* in *Excerpt. Legat.* p. 124, 126. *Theophylact.* l. iii. c. 43. The latter are more satisfactory; and especially *Paul Warnefrid.* c. iii. 12-54), who had read the more ancient histories of *Severinus* and *Gregory of Tours*. *Brunius* produces some letters of the popes, &c. & the facts are confirmed by the accurate maps of *Pagi* and *Martini*.

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valleys of Ferrara and Comacchio,¹ five maritime cities from Rimini to Ancona, and a second, inland Pentapolis, between the Adriatic coast and the hills of the Apennine. Three subordinate provinces, of Rome, of Venice, and of Naples, which were divided by hostile lands from the palace of Ravenna, acknowledged, both in peace and war, the supremacy of the exarch. The duchy of Rome appears to have included the Tuscan, Sabine, and Latian conquests, of the first four hundred years of the city, and the limits may be distinctly traced along the coast, from Civita Vecchia, to Terracina, and with the course of the Tiber from Ameria and Narni to the port of Ostia. The numerous islands from Grado to Chiozza, composed the infant dominion of Venice; but the more accessible towns on the continent were overthrown by the Lombards, who beheld with impotent fury a new capital rising from the waves. The power of the dukes of Naples was circumscribed by the bay and the adjacent isles, by the hostile territory of Capua, and by the Roman colony of Amalphi,² whose industrious citizens, by the invention of the mariner's compass, have unveiled the face of the globe. The three islands of Sorlinia, Corsica, and Sicily, still adhered to

¹ The pope's adherents, Zanghi and Pisanella, might justly claim the valley or marshes of Comacchio as a part of the exarchate. But the ambition of surrounding Modona, Reggio, Parma, and Piacenza, has darkened a geographical question somewhat doubtful and obscure. *Storia Muratori*, in the service of the house of Este, is not free from partiality and prejudice.

² See Dornemann, *Dissert. Iura de Republica Amalphitana*, p. 1-42, ad eorum Hist. Pandect. Florent.

the empire; and the acquisition of the farther Calabria removed the land-mark of Autharis from the shore of Rhegium to the isthmus of Consentia. In Sardinia, the savage mountaineers preserved the liberty and religion of their ancestors; but the husbandmen of Sicily were chained to their rich and cultivated soil. Rome was oppressed by the iron sceptre of the exarchs, and a Greek, perhaps an eunuch, insulted with impunity the ruins of the Capitol. But Naples soon acquired the privilege of electing her own dukes;^a the independence of Amalphi was the fruit of commerce; and the voluntary attachment of Venice was finally ennobled by an equal alliance with the eastern empire. On the map of Italy, the measure of the exarchate occupies a very inadequate space, but it included an ample proportion of wealth, industry, and population. The most faithful and valuable subjects escaped from the barbarian yoke; and the banners of Pavia and Verona, of Milan and Padua, were displayed in their respective quarters by the new inhabitants of Ravenna. The remainder of Italy The kingdom of the Lombards. was possessed by the Lombards; and from Pavia, the royal seat, their kingdom was extended to the east, the north, and the west, as far as the confines of the Avars, the Bavarians, and the Franks of Austrasia and Burgundy. In the language of modern geography, it is now represented by the Terra Firma of the Venetian republic, Tyrol, the Milanese, Piemont, the coast of Genoa, Mantua,

^a See Gregor. Magn. l. iii. epist. 23, 24, 26, 27.

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Parma, and Modena, the grand duchy of Tuscany, and a large portion of the ecclesiastical state from Perugia to the Adriatic. The dukes, and at length the princes, of Beneventum survived the monarchy, and propagated the name of the Lombards. From Capua to Tarentum, they reigned near five hundred years over the greatest part of the present kingdom of Naples.*

Language
and man-
ners of the
Lombards.

In comparing the proportion of the victorious and the vanquished people, the change of language will afford the most probable inference. According to this standard it will appear, that the Lombards of Italy, and the Visigoths of Spain, were less numerous than the Franks or Burgundians; and the conquerors of Gaul must yield, in their turn, to the multitude of Saxons and Angles who almost eradicated the idiotes of Britain. The modern Italian has been insensibly formed by the mixture of nations; the awkwardness of the barbarians in the nice management of declensions and conjugations, reduced them to the use of articles and auxiliary verbs; and many new ideas have been expressed by Teutonic appellations. Yet the principal stock of technical and familiar words is found to be of Latin derivation;† and if we

* I have described the state of Italy from the excellent Dissertation of BERNI. *Giannone* (*Storia Civile*, tom. i. p. 274-287) has illustrated the history of the Lombards in the geography of the Kingdom of Naples. After the loss of the true Calabres, the name of the Greeks signified that more distant of the more ignominious appellation of Hereticks; and the change appears to have taken place before the time of Charlemagne. (*Figini*, p. 56.)

† *Maflè*, (*Vetusta Illustrata*, part. i. p. 310-322), and *Nicastro*, (*Antichità Italiane*, tom. ii. p. 323-324), p. 323.

were sufficiently conversant with the dialects, the rustic, and the municipal dialects of ancient Italy, we should trace the origin of many terms which might, perhaps, be rejected by the classic purity of Rome. A numerous army constitutes but a small nation, and the powers of the Lombards were soon diminished by the retreat of twenty thousand Saxons, who scorned a dependent situation, and returned, after many bold and perilous adventures, to their native country.* The camp of Alboin was of formidable extent, but the extent of a camp would be easily circumscribed within the limits of a city; and its martial inhabitants must be thinly scattered over the face of a large country. When Alboin descended from the Alps, he invested his nephew, the first duke of Friuli, with the command of the province and the people; but the prudent Gisulf would have declined the dangerous office, unless he had been permitted to choose, among the nobles of the Lombards, a sufficient number of families† to form a perpetual colony of soldiers and subjects. In the progress of conquest, the same option could not be granted to the dukes of Bruscia or Bergamo, of Pavia or Turin, of Spoleto or Beneventum; but each of these, and each of their colleagues, settled in his appointed dis-

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Alboin, have mounted the same claims of the Italian blood: the former with enthusiasm, the latter with diffidence; both with boasting, indignity, and truth.

* Paul, de Gest. Longobard. l. iii. c. 5, 6, 7.

† Paul, l. iii. c. 9. He calls these families or generations by the Teutonic name of *Stem*, which is likewise used in the Saxon tongue. The humble descent was not probable of the nobility of his own age. See l. iv. c. 20.

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trict with a band of followers who resorted to his standard in war and his tribunal in peace. Their attachment was free and honourable: resigning the gifts and benefits which they had accepted, they might emigrate with their families into the jurisdiction of another duke; but their absence from the kingdom was punished with death, as a crime of military desertion.\* The posterity of the first conquerors struck a deeper root into the soil, which, by every motive of interest and honour, they were bound to defend. A Lombard was born the soldier of his king and his duke; and the civil assemblies of the nation displayed the banners, and assumed the appellation, of a regular army. Of this army, the pay and the rewards were drawn from the conquered provinces; and the distribution, which was not effected till after the death of Alboin, is disgraced by the foul marks of injustice and rapine. Many of the most wealthy Italians were slain or banished; the remainder were divided among the strangers, and a tributary obligation was imposed, (under the name of hospitality), of paying to the Lombards a third part of the fruits of the earth. Within less than seventy years, this artificial system was abolished by a more simple and solid tenure.<sup>†</sup> Either the Roman landlord was expelled by his strong and insolent guest; or the annual payment, a third of the produce, was ex-

\* Compare N<sup>o</sup>. 3 and 137 of the laws of Rotharis.

† Paul, l. ii. c. 31, 32, & iii. c. 16. The laws of Rotharis, promulgated A. D. 643, do not contain the smallest vestige of this payment of thirds; but they preserve many curious circumstances of the state of Italy and the manners of the Lombards.

changed by a more equitable transaction for an adequate proportion of landed property. Under these foreign masters, the business of agriculture, in the cultivation of corn, vines, and olives, was exercised with degenerate skill and industry by the labour of the slaves and natives. But the occupations of a pastoral life were more pleasing to the idleness of the barbarians. In the rich meadows of Venetia, they restored and improved the breed of horses for which that province had once been illustrious;\* and the Italians beheld with astonishment a foreign race of oxen or buffaloes.<sup>†</sup> The depopulation of Lombardy, and the increase of forests, afforded an ample range for the pleasures of the chase.<sup>‡</sup> That marvellous art which teaches the birds of the air to acknowledge the voice, and execute the commands, of their master, had been unknown to the ingenuity

\* The study of Horatius of Vichenza, and his frequent victories in the Olympic games, had diffused among the Greeks the taste of the Venetian horses; but the breed was extinct in the time of Strabo, *l. v. p. 275*. Claud. obtained from his uncle *genus equum equumque*. *Paul. l. ii. c. 9*. The Lombards afterwards introduced half-scythians—wild horses. *Paul. l. iv. c. 31*.

† *Time* (A. D. 1386) mentions, lately in Istria, a sort of Italian popular munda fere, (*Paul. Warabod. l. iv. c. 11*). The buffaloes, whose native climate appears to be Africa and India, are unknown to Europe, except in Italy, where they are numerous and useful. The ancients were ignorant of these animals, unless Aristotle (*Hist. Animal. l. ii. c. 1, p. 58*; *Friso*; 1785) has described them as the wild oxen of Archædia. See *Hist. Nat. l. ii. c. 11*, and *Supplement, tom. vi*. *Hist. Compend. des Voyages, tom. i. p. 7*. 481; *ib.* 105; *ib.* 101; *ib.* 256, 364; *ib.* 123; *ib.* 431; *ib.* 400; *ib.* 676; *Fremont's Description, p. 24*; *Dictionnaire d'Hist. Naturelle, par Valmont de Lessure, tom. ii. p. 14*. Yet I must not conceal the suspicion that *Paul.* by a vulgar error, may have applied the name of buffaloes to the aurochs, or wild bull, of western Germany.

‡ Consult the vast Dissertation of Meratori.



of the Greeks and Romans.<sup>2</sup> Scandinavia and Scythia produce the boldest and most tractable falcons;<sup>3</sup> they were tamed and educated by the roving inhabitants always on horseback and in the field. This favourite amusement of our ancestors was introduced by the barbarians into the Roman provinces; and the laws of Italy esteem the sword and the hawk as of equal dignity and importance in the hands of a noble Lombard.<sup>4</sup>

So rapid was the influence of climate and example, that the Lombards of the fourth generation surveyed with curiosity and affright the portraits of their savage forefathers.<sup>5</sup> Their heads were

<sup>2</sup> Their ignorance is proved by the silence even of those who professedly treat of the arts of hunting and the history of animals. Aristotle, *Hist. Animal.* l. ix, c. 38, tom. i. p. 585, and the Notes of his last editor, M. Camus, tom. ii. p. 314; Pliny, *Hist. Natur.* l. x, c. 16; Alian, *de Natur. Animal.* l. ii, c. 42, and perhaps Homer, (*Iliad.* viii. 219-225) describe with embellishment a tall figure and common share between the hawk and the Thracian fowler.

<sup>3</sup> Particularly the goshawk, or goshawk, of the size of a small eagle. See the animated description of M. de Buffon, *Hist. Naturelle*, tom. xvi, p. 220, &c.

<sup>4</sup> *Script. Rerum Italianarum*, tom. i. part ii. p. 125. This is the wish of the emperor Lewis the Pious. His father Charlemagne had observed in his household as well as in his army, (*Memories of Paganus Chrodericus*, par M. de St. Patrice, tom. iii. p. 172) that even in the laws of Rotharis a more early mention of the art of hawking, (N<sup>o</sup>. 327); and in Gaul, in the 11th century, it is recommended by Soliman Apulgaris among the talents of Aethas, (202-207).

<sup>5</sup> The epitaph of Desautel (*Paris.* l. iii. c. 12) may be applied to many of his countrymen.—

*Torrida sunt facies, et corda benigna  
Linguae robusta pectus herba fida.*

The portraits of the old Lombards might still be seen in the palace of Mantua, twelve miles from Milan, which had been founded as a reward to Queen Theodolinda, c. 16. 78, 79. See Muratori, *Ann.* l. 4, section viii, p. 305.

slaves behind, but the shaggy locks hung over their eyes and mouth, and a long beard, represented the name and character of the nation. Their dress consisted of loose linen garments, after the fashion of the Anglo-Saxons, which were decorated, in their opinion, with broad stripes of variegated colours. The legs and feet were clothed in long hose, and open sandals; and even in the security of peace a trusty sword was constantly girt to their side. Yet this strange apparel, and horrid aspect, often concealed a gentle and generous disposition; and as soon as the rage of battle had subsided, the captives and subjects were sometimes surprized by the humanity of the victor. The vices of the Lombards were the effect of passion, of ignorance, of intoxication; their virtues are the more laudable, as they were not affected by the hypocrisy of social manners, nor imposed by the rigid constraint of laws and education. I should not be apprehensive of deviating from my subject, if it were in my power to delineate the private life of the conquerors of Italy; and I shall relate with pleasure the adventurous gallantry of Autharis, which breathes the true spirit of chivalry and romance.\* After the loss of his promised bride, a Merovingian princess, he sought in marriage the daughter of the king of Bavaria; and Garibold accepted the alliance of the Italian monarch. Impatient of the slow

\* The story of Autharis and Theodelinda is related by Paul. i. c. 29, 34; and any fragment of Bavarian antiquity excites the insatiable diligence of the Count de Bux. *Hist. des Peuples de l'Europe*, tom. xi. p. 395-403; tom. xi. p. 1-22.

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progress of negotiation, the ardent lover escaped from his palace, and visited the court of Bavaria in the train of his own embassy. At the public audience, the unknown stranger advanced to the throne, and informed Garibald, that the ambassador was indeed the minister of state, but that he alone was the friend of Autharis, who had trusted him with the delicate commission of making a faithful report of the charms of his spouse. Theudelinda was summoned to undergo this important examination; and after a pause of silent rapture, he hailed her as the queen of Italy, and humbly requested, that, according to the custom of the nation, she would present a cup of wine to the first of her new subjects. By the command of her father, she obeyed: Autharis received the cup in his turn, and, in restoring it to the princess, he secretly touched her hand, and drew his own finger over his face and lips. In the evening, Theudelinda imparted to her nurse the indiscreet familiarity of the stranger, and was comforted by the assurance, that such boldness could proceed only from the king her husband, who, by his beauty and courage, appeared worthy of her love. The ambassadors were dismissed: no sooner did they reach the confines of Italy, than Autharis, raising himself on his horse, darted his battle-axe against a tree with incomparable strength and dexterity. "Such," said he to the astonished Bavarians, "such are the strokes of the king of the Lombards." On the approach of a French army, Garibald and his daughter took refuge in the dominions of their

ally; and the marriage was consummated in the palace of Verona. At the end of one year, it was dissolved by the death of Autharis: but the virtues of Thaulclinda\* had endeared her to the nation, and she was permitted to bestow, with her hand, the sceptre of the Italian kingdom.

From this fact, as well as from similar events,<sup>f</sup> it is certain that the Lombards possessed freedom to elect their sovereign, and sense to decline the frequent use of that dangerous privilege. The public revenue arose from the produce of land, and the profits of justice. When the independent dukes agreed that Autharis should ascend the throne of his father, they endowed the regal office with a fair moiety of their respective domains. The proudest nobles aspired to the honours of servitude near the person of their prince: he rewarded the fidelity of his vassals by the precarious gift of pensions and *benefices*; and atoned for the injuries of war, by the rich foundation of monasteries and churches. In peace a judge, a leader in war, he never usurped the powers of a sole and absolute legislator. The king of Italy convened the national assemblies in the palace, or more probably in the fields, of Pavia: his great council was composed of the persons most eminent by their birth and dignities; but the validity, as well as the execution, of their

<sup>f</sup> Govern-  
ment.

\* *Giuseppe Maria Corio de Napoli*, tom. 4, p. 427 has justly censured the impertinence of Boissacius, (*Gib. III. Nostr. B.* who, without right, or truth, or justice, has given the poor Queen Thaulclinda to the arms of a mutineer.

<sup>f</sup> *Paul. I. vi. c. 15.* The first dissertation of Muratori, and the first volume of Giannone's history, may be consulted for the state of the kingdom of Italy.

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A. D. 613,  
&c.

decrees, depended on the approbation of the *faithful* people, the *fortunate* army of the Lombards. About fourscore years after the conquest of Italy, their traditional customs were transcribed in Teutonic Latin,\* and ratified by the consent of the prince and people: some new regulations were introduced, more suitable to their present condition; the example of Rotharis was imitated by the wisest of his successors, and the laws of the Lombards have been esteemed the least imperfect of the barbaric codes.<sup>†</sup> Secure by their courage in the possession of liberty, these rude and hasty legislators were incapable of balancing the powers of the constitution, or of discussing the nice theory of political government. Such crimes as threatened the life of the sovereign, or the safety of the state, were adjudged worthy of death: but their attention was principally confined to the defence of the person and property of the subject. According to the strange jurisprudence of the times, the guilt of blood might be redeemed by a fine; yet the high price of nine hundred pieces of gold declares a just sense of the value of a simple citizen. Less atrocious injuries, a wound, a fracture, a blow, an opprobrious word, were measured with scrupulous and almost ridiculous diligence; and the prudence of the legislator encouraged the ignoble practice of

\* The most accurate edition of the laws of the Lombards is to be found in the *Scriptores Rerum Italianarum*, tom. i. part. 3. p. 1-181, collated from the most ancient MSS., and illustrated by the critical notes of Muratori.

† Montaignieu, *Recueil des Loix*, i. 22336. c. 6. Les loix des Lombards sont assez judicieuses; celles de Rotheis et des autres princes Lombards le sont encore plus.



bartering honour and revenge for a pecuniary compensation. The ignorance of the Lombards, in the state of paganism or Christianity, gave implicit credit to the malice and mischief of witchcraft; but the judges of the seventeenth century might have been instructed and confounded by the wisdom of Rotharis, who derides the absurd superstition, and protects the wretched victims, of popular or judicial cruelty.<sup>1</sup> The same spirit of a legislator, superior to his age and country, may be ascribed to Luitprand, who condemns, while he tolerates, the impious and inveterate abuse of duels,<sup>2</sup> observing from his own experience, that the juster cause had often been oppressed by successful violence. Whatever merit may be discovered in the laws of the Lombards, they are the genuine fruit of the reason of the barbarians, who never admitted the bishops of Italy to a seat in their legislative councils. But the succession of their kings is marked with virtue and ability; the troubled series of their annals is adorned with fair intervals of peace, order, and domestic happiness; and the Italians enjoyed a milder and more equitable government, than any

<sup>1</sup> See *Leges Rotharis*, No. 229, p. 47. *Strigol* is said to be the name of a witch. It is of the purest classic origin, (*Roest. apud* v, 20; *Petron. c.* 134); and, from the words of Petronius, *Strigol* stripes innocentis meritis non fit. It may be inferred that the persecution was of Italian rather than barbaric extraction.

<sup>2</sup> *Haec severis iuribus de iudicio duo, et multos indolentes per pro-  
prium plus iudicium quam iuribus perdet. Sed propter consuetudi-  
nem gentium nostram Langobardorum haec impium iuribus non pos-  
sumus. Supra* 74, No. 55, of the laws of Luitprand, promulgated  
A. D. 726.

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Misery of  
Rome.

of the other kingdoms which had been founded on the ruins of the western empire.<sup>1</sup>

Amidst the arms of the Lombards, and under the despotism of the Greeks, we again inquire into the fate of Rome,<sup>2</sup> which had reached, about the close of the sixth century, the lowest period of her depression. By the removal of the seat of empire, and the successive loss of the provinces, the sources of public and private opulence were exhausted; the lofty tree, under whose shade the nations of the earth had reposed, was deprived of its leaves and branches, and the sapless trunk was left to wither on the ground. The ministers of command, and the messengers of victory, no longer met on the Appian or Flaminian way; and the hostile approach of the Lombards was often felt and continually feared. The inhabitants of a potent and peaceful capital, who visit without an anxious thought the garden of the adjacent country, will faintly picture in their fancy the distress of the Romans; they shut or opened their gates with a trembling hand, beheld from the walls the flames of their houses, and heard the lamentations of their brethren, who were coupled together like dogs, and dragged away into distant slavery beyond the sea and the

<sup>1</sup> Read the history of Paul Warnefried; particularly l. ii. c. 16. Bunsen rejects the prius, which appears to contradict the discourses of Pope Gregory the Great (but Muratori *Annali d'Italia*, tom. v. p. 217) presumes to insinuate that the saint may have magnified the faults of Arius and enemies.

<sup>2</sup> The passages of the histories of Gregory, which represent the miserable state of the city and country, are transcribed in the *Annali di Barcelona*, A. D. 599, N<sup>o</sup>. 18; A. D. 599, N<sup>o</sup>. 7, &c. &c.

mountains. Such incessant alarms must annihilate the pleasures and interrupt the labours of a rural life; and the Campagna of Rome was speedily reduced to the state of a dreary wilderness, in which the land is barren, the waters are impure, and the air is infectious. Curiosity and ambition no longer attracted the nations to the capital of the world: but if chance or necessity directed the steps of a wandering stranger, he contemplated with horror the vacancy and solitude of the city, and might be tempted to ask, Where is the senate, and where are the people? In a season of excessive rains, the Tiber swelled above its banks, and rushed with irresistible violence into the valleys of the seven hills. A pestilential disease arose from the stagnation of the deluge, and so rapid was the contagion, that four-score persons expired in an hour, in the midst of a solemn procession, which implored the mercy of heaven.\* A society, in which marriage is encouraged and industry prevails, soon repairs the accidental losses of pestilence and war; but as the far greater part of the Romans was condemned to hopeless indigence and celibacy, the depopulation was constant and visible, and the gloomy enthusiasts might expect the approaching failure of the human race.† Yet the num-

\* The inundation and plague were reported by a dream, when his bishop, Gregory of Tours, had departed to Rome for some relief. The ingenious messenger embellished his tale and the river with a great dragon and a train of little serpents, (Greg. Tours. l. x. c. 12.)

† Gregory of Rome (Dialog. l. ii. c. 14) relates a memorable prediction of St. Basilidius. Roman Gentilium non exterminabitur sed turbabitur, agerem turbabitur ac terra cum in semetipsa macerabit. Such a prophecy melts into true history, and becomes the fulfilment of the fact after which it was formed.

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ber of citizens still exceeded the measure of subsistence: their precarious food was supplied from the harvests of Sicily or Egypt; and the frequent repetition of famine betrays the inattention of the emperor to a distant province. The edifices of Rome were exposed to the same ruin and decay: the mouldering fabrics were easily overthrown by inundations, tempests, and earthquakes, and the monks, who had occupied the most advantageous stations, exulted in their base triumph over the ruins of antiquity.\* It is commonly believed, that Pope Gregory I attacked the temples and mutilated the statues of the city; that by the command of the barbarian, the Palatine library was reduced to ashes; and that the history of Livy was the peculiar mark of his absurd and mischievous fanaticism. The writings of Gregory himself reveal his implacable aversion to the monuments of classic genius: and he points his severest censure against the profane learning of a bishop, who taught the art of grammar, studied the Latin poets, and pronounced with the same voice the praises of Jupiter and those of Christ. But the evidence of his destructive rage is doubtful and recent; the temple of peace, or the theatre of Marcellus, have been demolished by the slow operation of ages, and a formal proscription would have multiplied the copies of Virgil and Livy in

\* *Quidam enim se esse non Jovis seditionem, Christi laudes non capiant, et quia genus nefandumque sit episcopis causare quod non laici illius morem, ipse considerat, l. ii. ep. 46.* The writings of Gregory himself show his antipathy to any classic taste or literature.

the countries which were not subject to the ecclesiastical dictator.<sup>3</sup>

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The temples  
and reliques  
of the apostles.

Like Thebes, or Babylon, or Carthage, the name of Rome might have been erased from the earth, if the city had not been animated by a vital principle, which again restored her to honour and dominion. A vague tradition was embraced, that two Jewish teachers, a tent-maker and a fisherman, had formerly been executed in the circus of Nero, and at the end of five hundred years their genuine or fictitious relics were adored as the Palladium of Christian Rome. The pilgrims of the East and West resorted to the holy threshold; but the shrines of the apostles were guarded by miracles and invisible terrors: and it was not without fear that the pious catholic approached the object of his worship. It was fatal to touch, it was dangerous to behold, the bodies of the saints; and those who from the purest motives presumed to disturb the repose of the sanctuary, were affrighted by visions, or punished with sudden death. The unreasonable request of an empress, who wished to deprive the Romans of their sacred treasure, the head of St. Paul, was rejected with the deepest abhorrence; and the pope asserted, most probably with truth, that a linen which had been sanctified in the neighbourhood of his body, or the filings of his chain, which it was sometimes easy and sometimes impossible to obtain,

<sup>3</sup> Bayle, (*Dictionnaire Critique*, tom. ii. p. 388, 390), in a very good article of Gregory I, has quoted, for the buildings and statues, Nicetas in Gregory I; for the Palatine library, John of Salisbury, de Nugis Curialium, l. ii. c. 26; and for Livy, Antoninus of Florence & the editor of the three lives in the 17th century.



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Birth and  
profession  
of Gregory,  
the Roman.

possessed an equal degree of miraculous virtue.\* But the power as well as virtue of the apostles resided with living energy in the breast of their successors; and the chair of St. Peter was filled under the reign of Maurice by the first and greatest of the name of Gregory.<sup>†</sup> His grandfather Felix had himself been pope, and as the bishops were already bound by the law of celibacy, his consecration must have been preceded by the death of his wife. The parents of Gregory, Sylvia, and Gordian, were the noblest of the senate, and the most pious of the church of Rome: his female relations were numbered among the saints and virgins; and his own figure with those of his father and mother were represented near three hundred years in a family portrait,<sup>‡</sup> which he offered to the monastery of St.

\* *Gregory*, l. iii. c. xlv. 21. l. ii. c. 12. &c. From the spurs of Gregory, and the sixth volume of the *Annals of Harvius*, the plates read, &c. may collect the positions of holy iron which were inserted in keys or crosses of gold, and distributed in Britain, Gaul, Spain, Africa, Constantinople, and Egypt. The pious king who handed the file must have marked the initials which it was in his own power to operate or withhold: a circumstance which states the superstition of Gregory at the expense of his sanctity.

† Besides the Epistles of Gregory himself, which are collected by Dupin, *Bibliothèque Ecclesiastique*, v. p. 118-126, we have three Bibles of the pope: the two first written in the sixth and seventh centuries, the *Triplet* Vita St. Greg. Preface to the sixth volume of the *Benedictine edition*, by the doctors Paul (p. 1-18) and John (p. 19-38), and containing much original, though doubtful, evidence; the third, a long and laborious compilation by the Benedictine editors, (p. 126-202). The *Annals of Harvius* are a tedious but partial history. His royal prejudice was conquered by the good sense of Fleury, *Hist. Ecclesiastique*, viii. and his chronology has been rectified by the criticism of Pagi and Muratori.

‡ John the deacon has described these like an eye-witness, B. lxx. c. 82, 83; and his description is illustrated by Angelo Rocco, a Benedictine.

Andrew. The design and colouring of this picture afford an honourable testimony, that the art of painting was cultivated by the Italians of the sixth century; but the most object ideas must be entertained of their taste and learning, since the epistles of Gregory, his sermons, and his dialogues, are the work of a man who was second in erudition to none of his contemporaries;<sup>a</sup> his birth and abilities had raised him to the office of prefect of the city, and he enjoyed the merit of renouncing the pomp and vanities of this world. His ample patrimony was dedicated to the foundation of seven monasteries,<sup>b</sup> one in Rome,<sup>c</sup> and six in Sicily: and it was the wish of Gregory that he might be unknown in this

most antiquary, (St. Gerg. Opera, tom. iv. p. 519-526), who observes, that some MSS. of the papers of the sixth century are still preserved in the old churches of Rome, pp. 371-384. The same walls which represented Gregory's family are now decorated with the mosaic of St. Andrew, the chief object of Domini's and de' de's.

<sup>a</sup> Discipulus vero Hieronymi et vel grammaticus, eloquent, italicus, ita a patre suo institutus, ut quicquid ex patre suo dicitur, non solum in lingua, sed et in arte ipsa perfectus videretur. Card. Oppian. in Vit. S. Gregor. c. 8.

<sup>b</sup> The Benediction (Vit. Greg. l. i. p. 215-216) seems to reduce the number of Gregory's cells to the sum of three only; but as the question is not used in its original, it is clear that those powerful monks are in the wrong. See Butler's Lives of the Saints, vol. iii. p. 143; a work of merit; the sense and learning belong to the author—his prejudices are those of his profession.

<sup>c</sup> Monasterium Gregorianum in agmine Beati Gregorii milibus ad electum, sanctisque personis, et in communis Pauli in Pantheon, St. Andrew, (idem. in Vit. Greg. l. i. c. 6; Greg. l. vii. apud. lib. The house and monastery were situate on the side of the Colian hill which fronts the Pantheon; they are now occupied by the Camerlengo, the Arcivescovo, and St. Andrew has retired to a small chapel. Nardoni, Roma Antica, t. iii. c. 5, p. 105. Description of Rome, tom. ii. p. 447-448.

CHAP. life, and glorious only in the next. Yet his devotion, and it might be sincere, pursued the path which would have been chosen by a crafty and ambitious statesman. The talents of Gregory, and the splendour which accompanied his retreat, rendered him dear and useful to the church; and implicit obedience has been always inculcated as the first duty of a monk. As soon as he had received the character of deacon, Gregory was sent to reside at the Byzantine court, the nuncio or minister of the apostolic see; and he boldly assumed, in the name of St. Peter, a tone of independent dignity, which would have been criminal and dangerous in the most illustrious layman of the empire. He returned to Rome with a just increase of reputation, and after a short exercise of the monastic virtues, he was dragged from the cloister to the papal throne, by the unanimous voice of the clergy, the senate, and the people. He alone resisted, or seemed to resist, his own elevation; and his humble petition, that Maurice would be pleased to reject the choice of the Romans, could only serve to exalt his character in the eyes of the emperor and the public. When the fatal mandate was proclaimed, Gregory solicited the aid of some friendly merchants to convey him in a basket beyond the gates of Rome, and modestly concealed himself some days among the woods and mountains, till his retreat was discovered, as it is said, by a celestial light.

Pontificate  
of Gregory  
the Great,

The pontificate of Gregory the Great, which lasted thirteen years six months and ten days, is our

of the most edifying periods of the history of the church. His virtues, and even his faults, a singular mixture of simplicity and cunning, of pride and humility, of sense and superstition, were happily suited to his station and to the temper of the times. In his rival, the patriarch of Constantinople, he condemned the antichristian title of universal bishop, which the successor of St. Peter was too haughtily to concede, and too feeble to assume; and the ecclesiastical jurisdiction of Gregory was confined to the triple character of bishop of Rome, primate of Italy, and apostle of the West. He frequently ascended the pulpit, and kindled, by his rude, though pathetic eloquence, the congenial passions of his audience; the language of the Jewish prophets was interpreted and applied, and the minds of the people, depressed by their present calamities, were directed to the hopes and fears of the invisible world. His precepts and example defined the model of the Roman liturgy; the distribution of the parishes, the calendar of festivals, the order of processions, the service of the priests and deacons, the variety and change of sacerdotal garments. Till the last days of his life, he officiated in the canon of the mass, which continued above three hours; the Gregorian chant\*

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or First.  
A. D. 590,  
Feb. 2.  
A. D. 604,  
March 12.

His spiri-  
tual office,

\* The Lord's prayer consists of half a dozen lines; the Sacraments and Anaphoræ of Gregory fill 890 folio pages, *Mem. de l'Acad. des Inscriptions*, t. 1, p. 1-280; yet these only constitute a part of the *Ordo Romanus*, whose Maitland has illustrated and Flcury has abridged, (*Hist. Eccles. des. viii.*, p. 120-122).

\* I learn from the *Atte Dubou*, (*Reflections sur la Poésie et la Philosophie*, t. iii. p. 154, 156), that the simplicity of the Ambrosian chant





were recruited to the catholic church, and the conquest of Britain reflects less glory on the name of Caesar, than on that of Gregory I. Instead of six legions, forty monks were embarked for that distant island, and the pontiff lamented the austere duties which forbade him to partake the perils of their spiritual warfare. In less than two years he could announce to the archbishop of Alexandria, that they had baptized the king of Kent with ten thousand of his Anglo-Saxons; and that the Roman missionaries, like those of the primitive church, were armed only with spiritual and supernatural powers. The credulity or the prudence of Gregory was always disposed to confirm the truths of religion by the evidence of ghosts, miracles, and resurrections; and posterity has paid to *his* memory the same tribute, which he freely granted to the virtue of his own or the preceding generation. The celestial honours have been liberally bestowed by the authority of the popes, but Gregory is the last of their own order, whom they have presumed to inscribe in the calendar of saints.

Their temporal power insensibly arose from the calamities of the times: and the Roman bishops, who have deluged Europe and Asia with blood, were compelled to reign as the ministers of charity and peace. 1. The church of Rome, as it has

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\*\*\*\*\*

and tem-  
poral po-  
wer arose

\* A French critic (Perrin Guisenotius, Opera, tom. iii. p. 103-113) has simulated the right of Gregory to the justice mentioned in the Dialogues. Dupin (tom. i. p. 159) does not think that any one will search for the truth of all these miracles: I should like to know how many of them he believed himself.

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his estates,

been formerly observed, was endowed with ample possessions in Italy, Sicily, and the more distant provinces; and her agents, who were commonly subdeacons, had acquired a civil, and even criminal, jurisdiction over their tenants and ~~land~~ handmen. The successor of St. Peter administered his patrimony with the temper of a vigilant and moderate landlord;\* and the epistles of Gregory are filled with salutary instructions to abstain from doubtful or vexatious lawsuits; to preserve the integrity of weights and measures; to grant every reasonable delay, and to reduce the capitation of the slaves of the globe, who purchased the right of marriage by the payment of an arbitrary fine.† The rent or the produce of these estates was transported to the mouth of the Tiber, at the risk and expence of the pope: in the use of wealth he acted like a faithful steward of the church and the poor, and liberally applied to their wants the inexhaustible resources of abstinence and order. The voluminous account of his receipts and disbursements was kept above three hundred years in the Lateran, as the model of Christian economy.

\*Bosonius is unwilling to expatiate on the cure of the patrimonies, lest he should betray that they consisted not of impious *his* farms. The French writers, the Bollandian editors, (tom. iv. l. iii. p. 272, &c.), and Fleury, (tom. viii. p. 29, &c.), are not afraid of entering into more humble, though useful, details; and the humanity of Fleury dwells on the mild wisdom of Gregory.

† I much suspect that this pecuniary fine on the marriage of virgins produced the *furnus*, and other fabulous, rights, *de curage*, *de reuerence*, &c. With the consent of his husband, an hapless bride might purchase the payment in the name of a young landlord, and the central power would afford a precedent of local rather than legal tyranny.

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and roma.

On the four great festivals, he divided their quarterly allowance to the clergy, to his domestics, to the monasteries, the churches, the places of burial, the almshouses, and the hospitals of Rome, and the rest of the diocese. On the first day of every month, he distributed to the poor, according to the season, their stated portion of corn, wine, cheese, vegetables, oil, fish, fresh provisions, clothes, and money; and his treasures were continually summoned to satisfy, in his name, the extraordinary demands of indulgence and merit. The instant distress of the sick and helpless, of strangers and pilgrims, was relieved by the bounty of each day, and of every hour; nor would the pontiff indulge himself in a frugal repast, till he had sent the dishes from his own table to some objects deserving of his compassion. The misery of the times had reduced the nobles and matrons of Rome to accept, without a blush, the benevolence of the church: three thousand virgins received their food and raiment from the hand of their benefactor; and many bishops of Italy escaped from the barbarians to the hospitable threshold of the Vatican. Gregory might justly be styled the Father of his Country; and such was the extreme sensibility of his conscience, that, for the death of a beggar who had perished in the streets, he interdicted himself during several days from the exercise of sacerdotal functions. II. The misfortunes of Rome involved the apostolical pastor in the business of peace and war; and it might be doubtful to himself, whether piety or ambition prompted

CHAP. him to supply the place of his absent sovereign.  
XLV. Gregory awakened the emperor from a long  
slumber, exposed the guilt or incapacity of the  
exarch and his inferior ministers, complained  
that the veterans were withdrawn from Rome  
for the defence of Spoleto, encouraged the Ita-  
lians to guard their cities and altars; and con-  
descended, in the crisis of danger, to name the  
tribunes, and to direct the operations, of the pro-  
vincial troops. But the martial spirit of the pope  
was checked by the scruples of humanity and  
religion; the imposition of tribute, though it  
was employed in the Italian war, he freely con-  
demned as odious and oppressive; whilst he  
protected against the imperial edicts, the pious  
cowardice of the soldiers who deserted a mili-  
tary for a monastic life. If we may credit his  
own declarations, it would have been easy for  
Gregory to exterminate the Lombards by their  
domestic factions, without leaving a king, a  
duke, or a count, to save that unfortunate na-  
tion from the vengeance of their foes. As a  
Christian bishop, he preferred the salutary offices  
of peace; his mediation appeased the tumult of  
of arms; but he was too conscious of the arts of  
the Greeks, and the passions of the Lombards,  
to engage his sacred promise for the observance  
of the truce. Disappointed in the hope of a  
general and lasting treaty, he presumed to save  
his country without the consent of the emperor  
or the exarch. The sword of the enemy was  
suspended over Rome; it was averted by the  
mild eloquence, and seasonable gifts, of the pon-

tiff, who commanded the respect of heretics and barbarians. The merits of Gregory were treated by the Byzantine court with reproach and insult; but in the attachment of a grateful people, he found the purest reward of a citizen, and the best right of a sovereign.<sup>f</sup>

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XLV.The Seat-  
ing of  
Rome.

<sup>f</sup> The temporal reign of Gregory I is ably exposed by Sigebert in the first book, *de Regno Italiae*. See his works, torn. II, p. 34-72.



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*Revolutions of Persia after the death of Charaxes or Nabalireus—His son, Hormanz, a tyrant, is deposed—Usurpation of Baharum—Flight and restoration of Chosroes II—His gratitude to the Romans—The chaguz of the Avars—Revolt of the army against Maurice—His death—Tyranny of Phocas—Elevation of Heraclius—The Persian war—Charaxes subdues Syria, Egypt, and Asia Minor—Siege of Constantinople by the Persians and Avars—Persian expeditions—Victories and triumph of Heraclius.*

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Contest of  
Rome and  
Persia.

THE conflict of Rome and Persia was prolonged from the death of Crassus to the reign of Heraclius. An experience of seven hundred years might convince the rival nations of the impossibility of maintaining their conquests, beyond the fatal limits of the Tigris and Euphrates. Yet the emulation of Trajan and Julian was awakened by the trophies of Alexander, and the sovereigns of Persia indulged the ambitious hope of restoring the empire of Cyrus.\* Such extraordinary efforts of power and courage will always command the attention of posterity; but the events by which the

\* *Mitis qui . . . repositum . . . veteris Persarum ac Medorum terminos, sequi invenimus possesse Cyrus post Alexandro, per viri-bilitatem ac nitorem jactabat.* Tacit. Annal. vi. 11. Such was the language of the *Armenians*; I have repeatedly marked the lofty claims of the *Sassanians*.

fate of nations is not materially changed, leave a faint impression on the page of history, and the patience of the reader would be exhausted by the repetition of the same hostilities, undertaken without cause, prosecuted without glory, and terminated without effect. The arts of negotiation, unknown to the simple greatness of the senate and the Cæsars, were assiduously cultivated by the Byzantine princes; and the memorials of their perpetual embassies<sup>b</sup> repeat, with the same uniform prolixity, the language of falsehood and declamation, the insolence of the barbarians, and the servile temper of the tributary Greeks. Lamenting the barren superfluity of materials, I have studied to compress the narrative of these uninteresting transactions: but the just Nushirvan is still applauded as the model of oriental kings, and the ambition of his grandson Chosroes prepared the revolution of the East, which was speedily accomplished by the arms and the religion of the successors of Mahomet.

In the useless altercations, that precede and justify the quarrels of princes, the Greeks and the barbarians accused each other of violating the peace which had been concluded between the two empires about four years before the death of Justinian. The sovereign of Persia and India aspired to reduce under his obedience the province of Yemen or Arabia<sup>c</sup> Felix; the distant land of

Compendium  
of Yemen  
by Nushirvan.  
A. D. 279,  
&c.

<sup>b</sup> See the embassy of Menander, extracted and preserved in the 11th century by the order of Constantine Porphyrogenitus.

<sup>c</sup> The general independence of the Arabs, which cannot be admitted without many limitations, is kindly asserted in a separate dissertation.

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myrrh and frankincense, which had escaped, rather than opposed, the conquerors of the East. After the defeat of Abraham under the walls of Mecca, the discord of his sons and brothers gave an easy entrance to the Persians: they chased the strangers of Abyssinia beyond the Red Sea; and a native prince of the ancient Homerites was restored to the throne as the vassal or viceroy of the great Nushirvan.<sup>2</sup> But the nephew of Justinian declared his resolution to avenge the injuries of his Christian ally the prince of Abyssinia, as they suggested a decent pretence to discontinue the annual *tribute*, which was poorly disguised by the name of pension. The churches of Persarmenia were oppressed by the intolerant spirit of the Magi; they secretly invoked the protector of the Christians, and after the pious murder of their satraps, the rebels were armed and supported as the brethren and subjects of the Roman emperor. The complaints of Nushirvan were disregarded by the Byzantine court: Justin yielded to the importunities of the Turks, who offered an alliance against the common enemy; and the Persian monarchy was threatened at the

disavowal of the authors of the Universal History, vol. II. p. 126-130. A personal attack is supposed to have provoked the complaint in favour of the poetry of Ismaili; but those persons hardly are not afraid to risk the truth of Christianity on this kind of slippery foundation.

<sup>2</sup> D'Hartolot, *Biblioth. Orient.* p. 477. *Persée*, *Spécimen Hist. Arabum*, p. 64, 65. Father Paul Humeau, *Ann.* II. p. 640 has printed that after ten years peace, the Persian war which continued twenty years, was renewed A. D. 571. Mahomet was born A. H. 609, in the year of the elephant, or the defeat of Abraham (Diogenes, *Vie de Mahomet*, tom. I. p. 80, 82, 83) and the account is not the more for the conquest of Yamen.

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same instant by the united forces of Europe, of Ethiopia, and of Scythia. At the age of fourscore, the sovereign of the East would perhaps have chosen the peaceful enjoyment of his glory and greatness: but as soon as war became inevitable, he took the field with the alacrity of youth, whilst the aggressor trembled in the palace of Constantinople. Nushirvan, or Chosroes, conducted in person the siege of Dara; and although that important fortress had been left destitute of troops and magazines, the valour of the inhabitants resisted above five months the archers, the elephants, and the military engines of the great king. In the meanwhile his general Adarmann advanced from Babylon, traversed the desert, passed the Euphrates, insulted the suburbs of Antioch, reduced to ashes the city of Apamea, and laid the spoils of Syria at the feet of his master, whose perseverance in the midst of winter, at length subverted the bulwark of the East. But these losses, which astonished the provinces and the court, produced a salutary effect in the repentance and abdication of the emperor Justin: a new spirit arose in the Byzantine councils; and a truce of three years was obtained by the prudence of Tiberius. That reasonable interval was employed in the preparations of war: and the voice of rumour proclaimed to the world, that from the distant countries of the Alps and the Rhine, from Scythia, Mæsia, Pannonia, Illyricum, and Isauria, the strength of the imperial cavalry was reinforced with one hundred and fifty thousand soldiers. Yet the king of Persia, without fear, or without

His last  
war with  
the Ro-  
mans,  
A. D. 572.  
Ac.



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faith, resolved to prevent the attack of the enemy: again passed the Euphrates, and dismissing the ambassadors of Tiberias, arrogantly commanded them to await his arrival at Casarea, the metropolis of the Cappadocian provinces. The two armies encountered each other in the battle of Melitene: the barbarians, who darkened the air with a cloud of arrows, prolonged their line, and extended their wings across the plain; while the Romans, in deep and solid bodies, expected to prevail in closer action, by the weight of their swords and lances. A Scythian chief, who commanded their right wing, suddenly turned the flank of the enemy, attacked their rear-guard in the presence of Chosroes, penetrated to the midst of the camp, pillaged the royal tent, profaned the eternal fire, loaded a train of camels with the spoils of Asia, cut his way through the Persian host, and returned with songs of victory to his friends, who had consumed the day in single combats, or ineffectual skirmishes. The darkness of the night, and the separation of the Romans, afforded the Persian monarch an opportunity of revenge; and one of their camps was swept away by a rapid and impetuous assault. But the review of his loss, and the consciousness of his danger, determined Chosroes to a speedy retreat: he burnt, in his passage, the vacant town of Melitene: and, without consulting the safety of his troops, boldly swam the Euphrates on the back of an elephant. After this unsuccessful campaign, the want of magazines, and perhaps some inroad of the Turks, obliged him to disband or divide his



forces; the Romans were left masters of the field, and their general Justinian, advancing to the relief of the Persarmenian rebels, erected his standard on the banks of the Araxes. The great Pompey had formerly halted within three days march of the Caspian;\* that inland sea was explored for the first time, by an hostile fleet,† and seventy thousand captives were transplanted from Hyrcania to the isle of Cyprus. On the return of spring, Justinian descended into the fertile plains of Assyria, the flames of war approached the residence of Nushirvan, the indignant monarch sunk into the grave, and his last edict restrained his successors from exposing their person in a battle against the Romans. Yet the memory of this transient affront was lost in the glories of a long reign: and his formidable enemies, after indulging their dream of conquest, again solicited a short respite from the calamities of war.‡

His death,  
A. D. 578.

\* He had vanquished the Alans, who brought into the field 17,000 horse and 60,000 foot; but he divided the multitude of victorious reptiles, whose existence may admit of some doubt, as well as that of the neighbouring Araxes. Photarch. in Pompeio, tom. ii. p. 1123, 1126.

† In the history of the world I can only perceive two nations on the Caspian.—1. Of the Macedonians, when Ptolemy, the admiral of the king of Syria, Seleucus and Antiochus, descended most probably the river Oxus, from the sources of India. (Plin. Hist. Natur. vi. 21.) 2. Of the Russians, when Peter I. conducted a fleet and army from the neighbourhood of Moscow to the coast of Persia; (Bell's Travels, vol. ii. p. 325-337.) He justly observes, that such martial pomp had never been displayed on the Volga.

‡ For these Parties were not truceless, see Menander, in Eusebio Legat. p. 113-125; Theophrastus Rhetor. univ. Persiam, and. 124, p. 77, 80, 81; Strabo, l. v. c. 7-15; Theophrast. l. iii. c. 9-12; Agathang. l. vi. p. 146.

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## XLVI.

Tyranny  
and Vice  
of his son  
Hormuz,  
A. D. 579.  
230.

The throne of Chosroes Nashirvan was filled by Hormouz, or Hormisdas, the eldest or the most favoured of his sons. With the kingdoms of Persia and India, he inherited the reputation and example of his father, the service, in every rank, of his wise and valiant officers, and a general system of administration, harmonized by time and political wisdom, to promote the happiness of the prince and people. But the royal youth enjoyed a still more valuable blessing, the friendship of a sage who had presided over his education, and who always preferred the honour to the interest of his pupil, his interest to his inclination. In a dispute with the Greek and Indian philosophers, Buzurg<sup>a</sup> had once maintained, that the most grievous misfortune of life is old age without the remembrance of virtue: and our candour will presume that the same principle compelled him, during three years, to direct the councils of the Persian empire. His zeal was rewarded by the gratitude and docility of Hormouz, who acknowledged himself more indebted to his preceptor than to his parent: but when age and labour had impaired the strength and perhaps the faculties of this prudent counsellor, he retired from court, and abandoned the youthful monarch to his own passions and those of his

<sup>a</sup> Buzurg; Buzur may be considered, to his character and station, as the Seneca of his East: but his virtues, and perhaps his faults, are less known than those of the Roman, who appears to have been much more acquainted. The Persian sage was the person who imported into India the game of chess and the fables of Elizey. Such has been the name of his wisdom and virtues, that the Christians claim him as a believer in the gospel; and the Mahometans regard Buzurg as a pre-mature Mahometan. D'Harcourt, *Bibliothèque Orientale*, p. 218.

favourites. By the fatal vicissitude of human affairs, the same scenes were renewed at Ctesiphon, which had been exhibited in Rome after the death of Marcus Antoninus. The ministers of flattery and corruption, who had been banished by the father, were recalled and cherished by the son; the disgrace and exile of the friends of Nushirvan established their tyranny; and virtue was driven by degrees from the mind of Hormouz, from his palace, and from the government of the state. The faithful agents, the eyes and ears of the king, informed him of the progress of disorder, that the provincial governors flew to their prey with the fierceness of lions and eagles, and that their rapine and injustice would teach the most loyal of his subjects to abhor the name and authority of their sovereign. The sincerity of this advice was punished with death, the murmurs of the cities were despised, their tumults were quelled by military execution; the intermediate powers between the throne and the people were abolished; and the childish vanity of Hormouz, who affected the daily use of the tiara, was fond of declaring, that he alone would be the judge as well as the master of his kingdom. In every word, and in every action, the son of Nushirvan degenerated from the virtues of his father. His avarice defrauded the troops; his jealous caprice degraded the satraps; the palace, the tribunals, the waters of the Tigris, were stained with the blood of the innocent, and the tyrant exulted in the sufferings and execution of thirteen thousand victims. As the excuse of his cruelty, he sometimes conde-

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ascended to observe, that the fears of the Persians would be productive of hatred, and that their hatred must terminate in rebellion: but he forgot that his own guilt and folly had inspired the sentiments which he deplored, and prepared the event which he so justly apprehended. Exasperated by long and hopeless oppression, the provinces of Babylon, Susa, and Carmania, erected the standard of revolt: and the princes of Arabia, India, and Scythia, refused the customary tribute to the unworthy successor of Nushirvan. The arms of the Romans, in slow sieges and frequent inroads, afflicted the frontiers of Mesopotamia and Assyria; one of their generals professed himself the disciple of Scipio, and the soldiers were animated by a miraculous image of Christ, whose mild aspect should never have been displayed in the front of battle.<sup>1</sup> At the same time, the eastern provinces of Persia were invaded by the great khan, who passed the Oxus at the head of three or four hundred thousand Turks. The imprudent Hormouz accepted their perfidious and formidable aid; the cities of Khorasan or Bactriana were commanded to open their gates: the march of the barbarians towards the mountains of Hyrcania revealed the correspondence of the Turkish and Roman arms: and their union must have subverted the throne of the house of Sassan.

<sup>1</sup> See the imitation of *Jeſus* in *Themiſtius*, l. 6. c. 14; the image of *Chriſt*, l. 11. c. 3. Hereafter I ſhall ſpeak more amply of the Chriſtian ſwags—I had almoſt ſaid *idols*. This, if I am not miſtaken, is the ſimpleſt expreſſion of *divine manifeſtation*; but in the next thouſand years, many others iſſued from the ſame workshop.

Persia had been lost by a King; it was saved by an hero. After his revolt, Varanes or Bahram is stigmatized by the son of Hormouz as an ungrateful slave: the proud and ambiguous rebach of despotism, since he was truly descended from the ancient princes of Rei,\* one of the seven families whose splendid, as well as substantial, prerogatives exalted them above the heads of the Persian nobility.<sup>1</sup> At the siege of Dara, the valour of Bahram was signalized under the eyes of Nushirvan, and both the father and son successively promoted him to the command of armies, the government of Media, and the superintendence of the palace. The popular prediction which marked him as the deliverer of Persia, might be inspired by his past victories and extraordinary figure: the epithet *Gai-hin* is expressive of the quality of *dry wood*: he had the strength and stature of a giant, and his

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Exploit of  
Bahram,  
A. D. 330

\* *Rei*, or *Rei*, is mentioned in the apocryphal book of Tobit as already flourishing 700 years before Christ; under the Assyrian empire. Under the foreign names of *Europe* and *Armenia*, this city, 600 stadia to the south of the Caspian gulf, was successively embellished by the Macedonians and Persians, (Strabo, l. vii, p. 790). Its grandeur and population in the 6th century is exaggerated beyond the bounds of credibility; but it has been since ruined by wars and the hostilities of the air. Chardin, *Voyage en Perse*, tom. i. p. 375, 260. D'Hierac, *Recherches*, Oriental, p. 314.

<sup>1</sup> *Thucydides*, l. iii, c. 15. The story of the seven Persians is told in the third book of *Herodotus*; and their noble descendance is often mentioned, especially in the fragments of *Cicero*. Yet the independence of *Greece* (Hieron, l. iii, c. 83, 84) is hostile to the spirit of despotism, and it may not seem probable that the seven families could survive the revolutions of eleven hundred years. They might however be represented by the seven ministers, (Bosquet, *de Regna Persarum*, l. i, p. 199); and some Persian nobles, like the kings of Pontus (Pliny, l. v, p. 310) and Cappadocia, (Diodor. Sicul. l. xxxi, tom. ii, p. 517), might claim their descent from the bold companion of Darius.



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savage countenance was fancifully compared to that of a wild cat. While the nation trembled, while Hormouz disguised his terror by the name of suspicion, and his servants concealed their disloyalty under the mask of fear, Bahram alone displayed his undaunted courage and apparent fidelity: and as soon as he found that no more than twelve thousand soldiers would follow him against the enemy, he prudently declared, that to this fatal number heaven had reserved the honours of the triumph. The steep and narrow descent of the Pale Rudbar\* or Hyrcanian rock, is the only pass through which an army can penetrate into the territory of Rei and the plains of Media. From the commanding heights, a band of resolute men might overwhelm with stones and darts the myriads of the Turkish host: their emperor and his son were transpierced with arrows; and the fugitives were left, without council or provisions, to the revenge of an injured people. The patriotism of the Persian general was stimulated by his affection for the city of his forefathers; in the hour of victory every peasant became a soldier, and every soldier an hero: and their ardour was kindled by the gorgeous spectacle of beds, and thrones, and tables of massy gold, the spoils of Asia, and the luxury of the hostile camp. A prince of a less malignant temper could not easily have forgiven his benefactor, and the secret hatred of Hormouz was envenomed by a malicious report, that Bah-

\* See an accurate description of this mountain by Olsenius (*Voyage en Perse*, p. 997, 998), who ascended it with much difficulty and danger on his return from Ispahan to the Caspian sea.

ram had privately retained the most precious fruits of his Turkish victory. But the approach of a Roman army on the side of the Araxes compelled the implacable tyrant to smile and to applaud; and the toils of Bahram were rewarded with the permission of encountering a new enemy, by their skill and discipline more formidable than a Scythian multitude. Elated by his recent success, he despatched an herald with a bold defiance to the camp of the Romans, requesting them to fix a day of battle, and to choose whether they would pass the river themselves, or allow a free passage to the arms of the great king. The lieutenant of the emperor Maurice preferred the safer alternative, and this local circumstance, which would have enhanced the victory of the Persians, rendered their defeat more bloody and their escape more difficult. But the loss of his subjects, and the danger of his kingdom, were overbalanced in the mind of Hormouz by the disgrace of his personal enemy; and no sooner had Bahram collected and reviewed his forces, than he received from a royal messenger the insulting gift of a distaff, a spinning-wheel, and a complete suit of female apparel. Obedient to the will of his sovereign, he shewed himself to the soldiers in this unworthy disguise: they resented his ignominy and their own; a shout of rebellion ran through the ranks, and the general accepted their oath of fidelity and vows of revenge. A second messenger, who had been commanded to bring the rebel in chains, was trampled under the feet of an elephant, and manifestoes were diligently circulated, exhorting the Persians to assert their

His rebel-  
lion.

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 freedom against an odious and contemptible tyrant. The defection was rapid and universal: his loyal slaves were sacrificed to the public fury; the troops deserted to the standard of Bahram; and the provinces again saluted the deliverer of his country.

Hormouz  
 is deposed  
 and impris-  
 oned.

As the passes were faithfully guarded, Hormouz could only compute the number of his enemies by the testimony of a guilty conscience, and the daily defection of those who, in the hour of his distress, avenged their wrongs, or forgot their obligations. He proudly displayed the ensigns of royalty; but the city and palace of Modain had already escaped from the hand of the tyrant. Among the victims of his cruelty, Bindoes, a Sassanian prince, had been cast into a dungeon: his fetters were broken by the zeal and courage of a brother; and he stood before the king at the head of those trusty guards who had been chosen as the ministers of his confinement, and perhaps of his death. Alarmed by the hasty intrusion and bold reproaches of the captive, Hormouz looked round, but in vain, for advice or assistance; discovered that his strength consisted in the obedience of others, and patiently yielded to the single arm of Bindoes, who dragged him from the throne to the same dungeon in which he himself had been so lately confined. At the first tumult, Choeroes, the eldest of the sons of Hormouz, escaped from the city: he was persuaded to return by the pressing and friendly invitation of Bindoes, who promised to seat him on his father's throne, and who expected to reign under

the name of an inexperienced youth. In the just assurance, that his accomplices could neither forgive nor hope to be forgiven, and that every Persian might be trusted as the judge and enemy of the Tyrant, he instituted a public trial without precedent and without a copy in the annals of the East. The son of Nushirvan, who had requested to plead in his own defence, was introduced as a criminal into the full assembly of the nobles and satraps.\* He was heard with decent attention as long as he expatiated on the advantages of order and obedience, the danger of innovation, and the inevitable discord of those who had encouraged each other to trample on their lawful and hereditary sovereign. By a pathetic appeal to their humanity, he extorted that pity which is seldom refused to the fallen fortunes of a king; and while they beheld the abject posture and squalid appearance of the prisoner, his tears, his chains, and the marks of ignominious stripes, it was impossible to forget how recently they had adored the divine splendour of his diadem and purple. But an angry murmur arose in the assembly as soon as he presumed to vindicate his conduct, and to applaud the victories of his reign. He defined the duties of a king, and the Persian nobles listened with a smile of contempt; they were fired with indignation when he dared to vilify the character of Chosroes; and by the indiscreet offer of resigning the sceptre to the second of his sons, he subscribed his own

\* The Orientals suppose that Behram convened this assembly and proclaimed Chosroes; but Theophylact is, in this instance, more distinct and credible.





deposit in some holy place the diadem which he had usurped, and to accept from his gracious benefactor the pardon of his faults and the government of a province. The rebel might not be proud, and the king most assuredly was not humble; but the one was conscious of his strength, the other was sensible of his weakness; and even the modest language of his reply still left room for treaty and reconciliation. Chosroes led into the field the slaves of the palace and the populace of the capital; they beheld with terror the banners of a veteran army; they were encompassed and surprised by the evolutions of the general; and the satraps who had deposed Hormouz, received the punishment of their revolt, or expiated their first treason by a second and more criminal act of disloyalty. The life and liberty of Chosroes were saved, but he was reduced to the necessity of imploring aid or refuge in some foreign land; and the implacable Bindoes, anxious to secure an unquestionable title, hastily returned to the palace, and ended, with a bow-string, the wretched existence of the son of Nushirvan.\*

CHAP.  
XLV.Death of  
Hormouz,  
A. D. 590.

While Chosroes despatched the preparations of his retreat, he deliberated with his remaining friends,† whether he should lurk in the valleys of

Chosroes  
Went to the  
Roum.

\* Theophylact (l. iv. c. 7) imputes the death of Hormouz to his son, by whose command he was hurled to death with stones. I have followed the milder account of Khondemir and Eusebius, and shall always be content with the slightest evidence to extenuate the crime of perfidy.

† After the battle of Pharula, the Pootey of Larus (l. viii. c. 433) holds a similar debate. He was himself conscious of seeking the

Continued:



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mount Caucasus, or fly to the tents of the Turks, or solicit the protection of the emperor. The long emulation of the successors of Artaxerxes and Constantine increased his reluctance to appear as a suppliant in a rival court; but he weighed the forces of the Romans, and prudently considered, that the neighbourhood of Syria would render his escape more easy and their succours more effectual. Attended only by his concubines, and a troop of thirty guards, he secretly departed from the capital, followed the banks of the Euphrates, traversed the desert, and halted at the distance of ten miles from Circesium. About the third watch of the night, the Roman prefect was informed of his approach, and he introduced the royal stranger to the fortress at the dawn of day. From thence the king of Persia was conducted to the more honourable residence of Hierapolis; and Maurice dissembled his pride, and displayed his benevolence, at the reception of the letters and ambassadors of the grandson of Nushirvan. They humbly represented the vicissitudes of fortune and the common interest of princes, exaggerated the ingratitude of Bahram the agent of the evil principle, and urged, with specious argument, that it was for the advantage of the Romans themselves to support the two monarchies which balance the world, the two great luminaries by whose salutary influence it is vivified and adorn-

*Persians; but his companions shattered the mystical alliance, and the adverse propensities might operate as fatally as Chusroes and his companions, who could describe, with the same vehemence, the necessity of peace, religion, and amity, between the East and West.*

ed. The anxiety of Chosroes was soon relieved by the assurance, that the emperor had espoused the cause of justice and royalty; but Maurice prudently declined the expence and delay of his useless visit to Constantinople. In the name of his generous benefactor, a rich diadem was presented to the fugitive prince with an inestimable gift of jewels and gold; a powerful army was assembled on the frontiers of Syria and Armenia under the command of the valiant and faithful Narses,\* and this general, of his own nation, and his own choice, was directed to pass the Tigris, and never to sheath his sword till he had restored Chosroes to the throne of his ancestors. The enterprise, however splendid, was less arduous than it might appear. Persia had already re-  
 His return.

pented of her fatal rashness, which betrayed the heir of the house of Sassan to the ambition of a rebellious subject; and the bold refusal of the Magi to consecrate his usurpation, compelled Bahram to assume the sceptre, regardless of the laws and prejudices of the nation. The palace was soon distracted with conspiracy, the city with tumult, the provinces with insurrection; and the cruel execution of the guilty and the suspected, served to irritate rather than subdue the public discontent.

\* In this age there were three warriors of the name of *Narses*, who have been often confounded, (Fagi, *Critica*, tom. ii. p. 640).—1. A Parthian, the brother of Isaac and Artabazus, who, after a successful action against Belisarius, deserted from his Persian sovereign, and afterwards served in the Italian war. 2. The eunuch who conquered Italy. 3. The restorer of Chosroes, who is celebrated in the poem of Corippus (l. iii. 230-237) as *exilis super omnes ceteros agilis . . . habitu modestus . . . munus praestare placens, virtute verendus; fulmineus, cautor, vigilans, &c.*

CHAP.  
XVII.

and final  
victory.

Death of  
Bahram.

Restora-  
tion and  
policy of

No sooner did the grandson of Nushirvan display his own and the Roman banners beyond the Tigris, than he was joined, each day, by the increasing multitudes of the nobility and people; and as he advanced, he received from every side the grateful offerings of the keys of his cities and the heads of his enemies. As soon as Modun was freed from the presence of the usurper, the loyal inhabitants obeyed the first summons of Meherdes at the head of only two thousand horse, and Chosroes accepted the sacred and precious ornaments of the palace as the pledge of their truth and a presage of his approaching success. After the junction of the imperial troops, which Bahram vainly struggled to prevent, the contest was decided by two battles on the banks of the Zab, and the confines of Media. The Romans, with the faithful subjects of Persia, amounted to sixty thousand, while the whole force of the usurper did not exceed forty thousand men: the two generals signalized their valour and ability, but the victory was finally determined by the prevalence of numbers and discipline. With the remnant of a broken army, Bahram fled towards the eastern provinces of the Oxus: the enmity of Persia reconciled him to the Turks; but his days were shortened by poison, perhaps the most incurable of poisons; the stings of remorse and despair, and the bitter remembrance of lost glory. Yet the modern Persians still commemorate the exploits of Bahram; and some excellent laws have prolonged the duration of his troubled and transitory reign.

The restoration of Chosroes was celebrated with feasts and executions; and the music of the royal

banquet was often disturbed by the groans of dying or mutilated criminals. A general pardon might have diffused comfort and tranquillity through a country which had been shaken by the late revolutions; yet, before the sanguinary temper of Chosroes is blamed, we should learn whether the Persians had not been accustomed either to dread the rigour, or to dispise the weakness, of their sovereign. The revolt of Bahram, and the conspiracy of the satraps, were impartially punished by the revenge or justice of the conqueror; the merits of Bindoes himself could not purify his hand from the guilt of royal blood; and the son of Hormouz was desirous to assert his own innocence, and to vindicate the sanctity of kings. During the vigour of the Roman power, several princes were seated on the throne of Persia by the arms and the authority of the first Cæsars. But their new subjects were soon disgusted with the vices or virtues which they had imbibed in a foreign land; the instability of their dominion gave birth to a vulgar observation, that the choice of Rome was solicited and rejected with equal ardour by the capricious levity of oriental slaves.\* But the glory of Maurice was conspicuous in the long and fortunate reign of his son and his ally. A band of a thousand Romans, who continued to guard the person of Chosroes, pro-

\* *Experimentis cognitum est barbaris utile fœdus potius reges quam liberi.* These experiments are admirably represented in the invasion and expulsion of Vannus, (Annal. B. I. 35); Tiridates (Annal. vi. 32-44), and Mehrdates, (Annal. xi. 10; xii. 10-14). The eye of Yaxartes seems to have transplanted the camp of the Parthians and the walls of the baram.



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claimed his confidence in the fidelity of the strangers; his growing strength enabled him to dismiss his unpopular aid, but he steadily professed the same gratitude and reverence to his adopted father: and till the death of Maurice, the peace and alliance of the two empires were faithfully maintained. Yet the mercenary friendship of the Roman prince had been purchased with costly and important gifts: the strong cities of Martyropolis and Dara were restored, and the Persarmenians became the willing subjects of an empire, whose eastern limit was extended, beyond the example of former times, as far as the banks of the Araxes and the neighbourhood of the Caspian. A pious hope was indulged, that the church, as well as the state, might triumph in this revolution; but if Chosroes had sincerely listened to the Christian bishops, the impression was cruized by the zeal and eloquence of the Magi; if he was armed with philosophic indifference, he accommodated his belief, or rather his professions, to the various circumstances of an exile and a sovereign. The imaginary conversion of the king of Persia was reduced to a local and superstitious veneration for Sergius,\* one of the saints of Antioch, who heard his prayers and appeared to him in dreams; he enriched the shrine with offerings of gold and silver,

\* Sergius and his companion Basilus, who are said to have suffered in the persecution of Maximian, obtained divine honours in France, Italy, Constantinople, and the East. Their tomb at Samosata was famous for miracles, and that Syrian town acquired the more honourable name of Sergiopolis. Tilmont, *Nouv. Eclairciss.* tom. v. p. 401-406; *Huet's Solenne*, vol. 2, p. 122.

and ascribed to this invisible patron, the success of his arms, and the pregnancy of Sira, a devout Christian, and the best beloved of his wives.\* The beauty of Sira, or Schirin,<sup>†</sup> her wit, her musical talents, are still famous in the history or rather in the romances of the East: her own name is expressive, in the Persian tongue, of sweetness and grace; and the epithet of *Parviz* alludes to the charms of her royal lover. Yet Sira never shared the passion which she inspired, and the bliss of Chosroes was tortured by a jealous doubt, that while he possessed her person, she had bestowed her affections on a meaner favourite.<sup>‡</sup>

\* Eusebius, *h. eccl.* c. 21, and Theophylact, *il. v.* c. 13, 14, have preserved the original letters of Chosroes, written in Greek, signed with his own hand, and afterwards inscribed on copper and tables of gold, which were deposited in the church of Sergopolis. They had been sent to the bishop of Antioch, ex-primate of Syria.

† The Greeks only describe her as a Roman by birth, a Christian by religion; but she is represented as the daughter of the emperor Mavroe in the Persian and Turkish Romances, which celebrate the love of Khosrau for Schirin, of Schirin for Farhad, the most beautiful youth of the East. D'Hérbelot, *Biblioth. Orient.* p. 180, 697, 898.

‡ The whole series of the tyranny of Hormouz, the revolt of Bahman, and the flight and restoration of Chosroes, is related by two contemporary Greeks—more minutely by Eusebius, *il. vi.* c. 16, 17, 18, 19—and more diffusely by Theophylact Simocatta, *il. iii.* c. 6, 19; *il. iv.* c. 1-10; *il. v.* c. 1-16; succeeding compilers, Zonaras and Cedrenus, cut only themselves and abridge. The Christian Arabs, Eutychius, (*Annal. tom. ii.* p. 200-203), and Abulpharagius, (*Dynast.* p. 96-99), appear to have consulted some particular memoirs. The great Persian historians of the 17th century, Mirchond and Rhodensis, are only known to me by the imperfect extracts of Hakimi, (*Tarikh.* p. 139-155); Tarsia, in rather Saxon, (*Hist. de Perse.* p. 152-169); a Turkish MS. translated by the Abbé Fourmont, (*Hist. de l'Académie des Inscriptions.* tom. vi., p. 223-231); and d'Hérbelot, (*art. orient.* *Biblioth.* p. 457-459) Bahman, p. 473; Khosrau Parviz, p. 226. Were I perfectly satisfied of their authority, I could with these oriental materials had been more copious.

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XLVI.

Pride, policy, and power of the chagan of the Avars.  
A. D. 570-800, &c.

While the majesty of the Roman name was revived in the East, the prospect of Europe is less pleasing and less glorious. By the departure of the Lombards, and the ruin of the Gepids, the balance of power was destroyed on the Danube; and the Avars spread their permanent dominion from the foot of the Alps to the sea-coast of the Euxine. The reign of Baian is the brightest era of their monarchy; their chagan, who occupied the rustic palace of Attila, appears to have imitated his character and policy;\* but as the same scenes were repeated in a smaller circle, a minute representation of the copy would be devoid of the greatness and novelty of the original. The pride of the second Justin, of Tiberius, and Maurice, was humbled by a proud barbarian, more prompt to inflict, than exposed to suffer, the injuries of war; and as often as Asia was threatened by the Persian arms, Europe was oppressed by the dangerous inroads, or costly friendship, of the Avars. When the Roman envoys approached the presence of the chagan, they were commanded to wait at the door of his tent, till, at the end perhaps of ten or twelve days, he condescended

\* A general idea of the pride and power of the chagan may be taken from Menander, (Excerpt. Legat. p. 117, &c.), and Theophylact, (i. 1, p. 34 & 35, p. 124), whose right books are much more honourable to the Avar than to the Roman prince. The predecessor of Baian had tasted the hospitality of Rome, and he survived the reign of Maurice. (Huet, Hist. des Peuples Barbares, tom. vi. p. 545.) The chagan who invaded Italy A. D. 611, (Muratori, Annali, tom. v. p. 365), was then juvenis etate florentem, (Ferd. Wernsdorf, de Gent. Longobard. l. i. c. 28), the son, perhaps, or the grandson, of Baian.

to admit them. If the substance or the style of their message was offensive to his ear, he insulted, with a real or affected fury, their own dignity, and that of their prince; their baggage was plundered, and their lives were only saved by the promise of a richer present and a more respectful address. But *his* sacred ambassadors enjoyed and abused an unbounded license in the midst of Constantinople: they urged, with importunate clamours, the increase of tribute, or the restitution of captives and deserters; and the majesty of the empire was almost equally degraded by a base compliance, or by the false and fearful excuses, with which they eluded such insolent demands. The chagan had never seen an elephant; and his curiosity was excited by the strange, and perhaps fabulous, portrait of that wonderful animal. At his command, one of the largest elephants of the imperial stables was equipped with stately caparisons, and conducted by a numerous train to the royal village in the plains of Hungary. He surveyed the enormous beast with surprise, with disgust, and possibly with terror; and smiled at the vain industry of the Romans, who, in search of such useless rarities, could explore the limits of the land and sea. He wished, at the expence of the emperor, to repose in a golden bed. The wealth of Constantinople, and the skilful diligence of her artists, were instantly devoted to the gratification of his caprice; but when the work was finished, he rejected with scorn a present so





the Avar horse, and a fleet of large boats was built in the Hercynian wood, to descend the Danube, and to transport into the Save the materials of a bridge. But as the strong garrison of Singidunum, which commanded the conflux of the two rivers, might have stopped their passage and baffled his designs, he dispelled their apprehensions by a solemn oath, that his views were not hostile to the empire. He swore by his sword, the symbol of the god of war, that he did not, as the enemy of Rome, construct a bridge upon the Save. "If I violate my oath," pursued the intrepid Balan, "may I myself, and the last of my nation, perish by the sword! may the heavens, and fire, the deity of the heavens, fall upon our heads! may the forests and mountains bury us in their ruins! and the Save returning, against the laws of nature, to his source, overwhelm us in his angry waters!" After this barbarous imprecation, he calmly inquired, what oath was most sacred and venerable among the Christians, what guilt of perjury it was most dangerous to incur. The bishop of Singidunum presented the gospel, which the chagan received with devout reverence. "I swear," said he, "by the God who has spoken in this holy book, that I have neither falsehood on my tongue, nor treachery in my heart." As soon as he rose from his knees, he accelerated the labour of the bridge, and despatched an envoy to proclaim what he no longer wished to conceal. "Inform the emperor," said the perfidious Balan, "that Sirmium is invested on every side. Advise his prudence

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"to withdraw the citizens and their effects, and  
"to resign a city which it is now impossible to  
"relieve or defend." Without the hope of relief, the defence of Sirmium was prolonged above three years: the walls were still untouched; but famine was inclosed within the walls, till a merciful capitulation allowed the escape of the naked and hungry inhabitants. Singidunum, at the distance of fifty miles, experienced a more cruel fate: the buildings were razed, and the vanquished people was condemned to servitude and exile. Yet the ruins of Sirmium are no longer visible; the advantageous situation of Singidunum soon attracted a new colony of Slavonians, and the conflux of the Save and Danube is still guarded by the fortifications of Belgrade, or the *White City*, so often and so obstinately disputed by the Christian and Turkish arms.\* From Belgrade to the walls of Constantinople a line may be measured of six hundred miles: that line was marked with flames and with blood; the horses of the Avars were alternately bathed in the Euxine and the Adriatic; and the Roman pontiff, alarmed by the approach of a more savage enemy,† was reduced to cherish the Lombards as

\* See d'Anville, in the *Mémoires de l'Académie des Inscriptions*, tom. XXIII. p. 412-442. The Sclavonic name of Belgrade is mentioned in the xth century by Constantine Porphyrogenitus; the Latin appellation of *Alba Graeca* is used by the Franks in the beginning of the xth. (p. 414.)

† Baron. *Annal. Eccles.* A. D. 800, N. 1. Paul Warnfried (l. vi. c. 28) relates their irruption into Friuli. and (l. 39) the captivity of his ancestors, about A. D. 632. The Sclavi traversed the Adriatic, with multitudes of slaves, and made a descent in the territory of Ravenna. (l. 47.)

the protectors of Italy. The despair of a captive, whom his country refused to ransom, disclosed to the Avars the invention and practice of military engines;<sup>2</sup> but in the first attempts, they were rudely framed and awkwardly managed; and the resistance of Diocletianopolis and Beroea, of Philippopolis and Adrianople, soon exhausted the skill and patience of the besiegers. The warfare of Baian was that of a Tartar, yet his mind was susceptible of a humane and generous sentiment; he spared Anchialus, whose salutary waters had restored the health of the best beloved of his wives; and the Romans confess, that their starving army was fed and dismissed by the liberality of a foe. His empire extended over Hungary, Poland, and Prussia, from the mouth of the Danube to that of the Oder;<sup>3</sup> and his new subjects were divided and transplanted by the jealous policy of the conqueror.<sup>4</sup> The eastern regions of Germany, which had been left vacant by the emigration of the Vandals, were replenished with Slavonian colonists; the same tribes are discovered in the

<sup>2</sup> Even the catapults, or movable turret. Theophylact, l. ii. 16, 17.

<sup>3</sup> The arms and pilchures of the emperor reached to the neighbourhood of a western sea, fifteen months' journey from Constantinople. The emperor Maurice conversed with some itinerant harpers from that remote country, and only seems to have mistaken a trade for a nation. Theophylact, l. vi. c. 2.

<sup>4</sup> This is one of the most probable and luminous conjectures of the learned Count de Bunt, (*Hist. des Peuples Barbares*, tom. xi. p. 646-650). The Teuchi and Serbi are found together east-mount Caucasus, in Mythium, and on the Lower Elbe. Even the wildest traditions of the Bohemians, &c. afford some colour to his hypothesis.

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neighbourhood of the Adriatic and of the Baltic, and with the name of Baian himself, the Illyrian cities of Neyss and Lissa are again found in the heart of Silesia. In the disposition both of his troops and provinces, the chagan exposed the vassals, whose lives he disregarded,<sup>1</sup> to the first assault; and the swords of the enemy were blunted before they encountered the native valour of the Avars.

Wart of  
Maurice  
against the  
Avars,  
A. D. 593.  
602.

The Persian alliance restored the troops of the East to the defence of Europe; and Maurice, who had supported ten years the insolence of the chagan, declared his resolution to march in person against the barbarians. In the space of two centuries, none of the successors of Theodosius had appeared in the field, their lives were supinely spent in the palace of Constantinople; and the Greeks could no longer understand, that the name of *emperor*, in its primitive sense, denoted the chief of the armies of the republic. The martial ardour of Maurice was opposed by the grave flattery of the senate, the timid superstition of the patriarch, and the tears of the empress Constantina; and they all conjured him to devolve on some meaner general the fatigues and perils of a Scythian campaign. Deaf to their advice and entreaty, the emperor boldly advanced<sup>2</sup> seven miles from the capital; the sacred

<sup>1</sup> See Frodoarius, in the *Histories of France*, tom. ii. p. 432. Baian did not conceal his proud insensibility. *On envoie tout recuser, according to a foolish emendation* *recuser* is *refuse*; it is not *refuse* *to* *the* *same* *place*, *all* *qui* *se* *peut* *faire* *en* *un* *moment*.

<sup>2</sup> See the march and return of Maurice, in Theopylact, l. v. c. 13; l. vi. c. 1, 2, 3. If he were a writer of taste or genius, we might suspect

suspect

ensign of the cross was displayed in the front, and Maurice, reviewed with conscious pride, the arms and numbers of the veterans who had fought and conquered beyond the Tigris. Anchælus was the last term of his progress by sea and land; he solicited, without success, a miraculous answer to his nocturnal prayers; his mind was confounded by the death of a favourite horse, the encounter of a wild bear, a storm of wind and rain, and the birth of a monstrous child; and he forgot that the best of omens is to unsheath our sword in the defence of our country.\* Under the pretence of receiving the ambassadors of Persia, the emperor returned to Constantinople, exchanged the thoughts of war for those of devotion, and disappointed the public hope, by his absence and the choice of his lieutenants. The blind partiality of fraternal love might excuse the promotion of his brother Peter, who fled with equal disgrace from the barbarians, from his own soldiers, and from the inhabitants of a Roman city. That city, if we may credit the resemblance of name and character, was the famous Azimuntium,† which had alone repelled the tempest of Attila.

suspect him of an elegant irony; but Theophrast is surely harmless.

\* *Τὸ αὐτὸ ἔργον ἀνέσθη, ὡς ἐργον.* *Iliad*, xii, 242.

This noble verse, which milks the spirit of an hero with the reason of a sage, may prove that Homer was in every light superior to his age and country.

† Theophrast, l. vii, c. 3. On the evidence of this fact, which had not occurred to my memory, the candid reader will correct and excuse a note in the fifth volume of this history, p. 83, which fastens the decay of *Asinus*, or *Arimuntium*: another century of patriotism and valor is sharply purchased by such a confusion.



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The example of her warlike youth was propagated to succeeding generations; and they obtained, from the first or the second Justin, an honourable privilege, that their valour should be always reserved for the defence of their native country. The brother of Maurice attempted to violate this privilege, and to mingle a patriot hand with the mercenaries of his camp; they retired to the church, he was not awed by the sanctity of the place; the people rose in their cause, the gates were shut, the ramparts were manned; and the cowardice of Peter was found equal to his arrogance and injustice. The military fame of *Commentiolus*\* is the object of satire or comedy rather than of serious history, since he was even deficient in the vile and vulgar qualification of personal courage. His solemn councils, strange evolutions, and secret orders, always supplied an apology for flight or delay. If he marched against the enemy, the pleasant valleys of mount Hamus opposed an insuperable barrier; but in his retreat, he explored, with fearless curiosity, the most difficult and obsolete paths, which had almost escaped the memory of the oldest native. The only blood which he lost was drawn, in a real or affected malady, by the lancet of a surgeon; and his health, which felt with exquisite sensibility the approach of the barbarians, was uniformly restored by the repose and safety of the winter season. A prince who could promote and support this unworthy favourite,

\* See the shameful conduct of *Commentiolus*, in Theophylact, l. ii, c. 10-15; l. vii, c. 13, 14; l. viii, c. 2, 4.

must derive no glory from the accidental merit of his colleague Priscus.\* In five successive battles, which seem to have been conducted with skill and resolution, seventeen thousand two hundred barbarians were made prisoners: near sixty thousand, with four sons of the chagan, were slain: the Roman general surprised a peaceful district of the Gepidae, who slept under the protection of the Avars; and his last trophies were erected on the banks of the Danube and the Teyss. Since the death of Trajan, the arms of the empire had not penetrated so deeply into the old Dacia: yet the success of Priscus was transient and barren; and he was soon recalled, by the apprehension, that Baian, with dauntless spirit and recruited forces, was preparing to avenge his defeat under the walls of Constantinople.†

The theory of war was not more familiar to the camps of Caesar and Trajan, than to those of Justinian and Maurice.‡ The iron of Tuscany or Pontus still received the keenest temper from the skill of the Byzantine workmen. The magazines were plentifully stored with every species of of-

State of  
the Roman  
armies.

\* See the exploits of Priscus, l. viii, c. 2, 3.

† The general detail of the war against the Avars, may be traced to the first, second, sixth, seventh, and eighth books of the History of the emperor Maurice, by Theophylact Simocatta. As he wrote in the reign of Heraclius, he had no temptation to flatter; but his want of judgment renders him diffuse in trifles and obscure in the most interesting facts.

‡ Maurice himself composed all books on the military art, which are still extant, and have been published (Upsal, 1664) by John Scheffer at the end of the *Tactics of Arrian*, (Eusebicus, Bibliot. Græca, l. vi, c. 8, tom. iii, p. 276), who promises to speak more fully of his work in its proper place.

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ensive and defensive arms. In the construction and use of ships, engines, and fortifications, the barbarians admired the superior ingenuity of a people whom they so often vanquished in the field. The science of tactics, the order, evolutions, and stratagems of antiquity, was transcribed and studied in the books of the Greeks and Romans. But the solitude or degeneracy of the provinces could no longer supply a race of men to handle those weapons, to guard those walls, to navigate those ships, and to reduce the theory of war into bold and successful practice. The genius of Belisarius and Narses had been formed without a master, and expired without a disciple. Neither honour, nor patriotism, nor generous superstition, could animate the lifeless bodies of slaves and strangers, who had succeeded to the honours of the legions: it was in the camp alone that the emperor should have exercised a despotic command; it was only in the camps that his authority was disobeyed and insulted: he appeased and inflamed with gold the licentiousness of the troops; but their vices were inherent, their victories were accidental, and their costly maintenance exhausted the substance of a state which they were unable to defend. After a long and pernicious indulgence, the cure of this inveterate evil was undertaken by Maurice; but the rash attempt, which drew destruction on his own head, tended only to aggravate the disease. A reformer should be exempt from the suspicion of interest, and he must possess the confidence and esteem of those whom he proposes to reclaim. The

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—————  
their dis-  
content.

troops of Maurice might listen to the voice of a victorious leader: they disdained the admonitions of statesmen and sophists, and when they received an edict which deducted from their pay the price of their arms and clothing, they execrated the avarice of a prince insensible of the dangers and fatigues from which he had escaped. The camps both of Asia and Europe were agitated with frequent and furious seditions: the enraged soldiers of Edessa pursued, with reproaches, with threats, with wounds, their trembling generals: they overturned the statues of the emperor, cast stones against the miraculous image of Christ, and either rejected the yoke of all civil and military laws, or instituted a dangerous model of voluntary subordination. The monarch, always distant, and often deceived, was incapable of yielding or persisting according to the exigence of the moment. But the fear of a general revolt induced him too readily to accept any act of valour, or any expression of loyalty, as an atonement for the popular offence: the new reform was abolished as hastily as it had been announced, and the troops, instead of punishment and restraint, were agreeably surprised by a gracious proclamation of immunities and rewards. But the soldiers accepted without gratitude the tardy and reluctant gifts of the emperor: their insolence was elated by the discovery of his weakness and their own strength; and their mutual hatred was inflamed beyond the desire of forgiveness or the hope of

\* See the notices under the reign of Maurice, in Theophylact, t. II, c. 1-8; t. IV, c. 7, 8, 10; t. VII, c. 1; t. VIII, c. 6, 8.

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.....

and rebel-  
lion.

Election of  
Phocas,  
A. D. 602,  
October.

reconciliation. The historians of the times adopt the vulgar suspicion, that Maurice conspired to destroy the troops whom he had laboured to reform; the misconduct and favour of Comnenitinus are imputed to this malevolent design; and every age must condemn the inhumanity or avarice of a prince, who, by the trifling ransom of six thousand pieces of gold, might have prevented the massacre of twelve thousand prisoners in the hands of the chagan. In the just fervour of indignation, an order was signified to the army of the Danube, that they should spare the magazines of the province, and establish their winter-quarters in the hostile country of the Avars. The measure of their grievances was full: they pronounced Maurice unworthy to reign, expelled or slaughtered his faithful adherents, and, under the command of Phocas, a simple centurion, returned by hasty marches to the neighbourhood of Constantinople. After a long series of legal succession, the military disorders of the third century were again revived; yet such was the novelty of the enterprise, that the insurgents were awed by their own rashness. They hesitated to invest their favourite with the vacant purple; and while they rejected all treaty with Maurice himself, they held a friendly correspondence with his son Theodosius, and with Ger-

<sup>1</sup> Theophylact and Theophanes seem ignorant of the conspiracy and death of Maurice. Their charges, so unfavourable to the memory of that emperor, are first mentioned by the author of the *Paschal Chronicle*, (p. 379, 380); from whence *Zonaras* (tom. II, l. xiv. p. 77, 78) has transcribed them. *Cedrenus* (p. 299) has followed another computation of the ransom.



manus, the father-in-law of the royal youth. So  
 obscure had been the former condition of Pho-  
 cas, that the emperor was ignorant of the name  
 and character of his rival: but as soon as he learn-  
 ed, that the centurion, though bold in sedition,  
 was timid in the face of danger, "Alas!" cried  
 the desponding prince, "if he is a coward, he will  
 surely be a murderer."

Yet if Constantinople had been firm and faith-  
 ful, the murderer might have spent his fury against  
 the walls; and the rebel army would have been  
 gradually consumed or reconciled by the prudence  
 of the emperor. In the games of the circus, which  
 he repeated with unusual pomp, Maurice disguis-  
 ed, with smiles of confidence, the anxiety of his  
 heart, condescended to solicit the applause of the  
*factions*, and flattered their pride by accepting  
 from their respective tribunes a list of nine hun-  
 dred *blues* and fifteen hundred *greens*, whom he  
 affected to esteem as the solid pillars of his throne:  
 Their treacherous or languid support betrayed his  
 weakness and hastened his fall; the green faction  
 were the secret accomplices of the rebels, and the  
 blues recommended lenity and moderation in a  
 contest with their Roman brethren. The rigid  
 and parsimonious virtues of Maurice had long  
 since alienated the hearts of his subjects: as he  
 walked barefoot in a religious procession, he was  
 rudely assaulted with stones, and his guards were  
 compelled to present their iron-pieces in the de-  
 fence of his person. A fanatic monk ran through  
 the streets with a drawn sword, denouncing  
 against him the wrath and the sentence of God;

Barrett of  
 Constanti-  
 nople.

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CONTINUED.

and a vile plebeian, who represented his countenance and apparel, was seated on an ass, and pursued by the imprecations of the multitude.\* The emperor suspected the popularity of Germanus with the soldiers and citizens; he feared, he threatened, but he delayed to strike; the patrician fled to the sanctuary of the church; the people rose in his defence, the walls were deserted by the guards, and the lawless city was abandoned to the flames and rapine of a nocturnal tumult. In a small bark, the unfortunate Maurice, with his wife and nine children, escaped to the Asiatic shore; but the violence of the wind compelled him to land at the church of St. Autonomus,<sup>†</sup> near Chalcedon, from whence he despatched Theodosius, his eldest son, to implore the gratitude and friendship of the Persian monarch. For himself, he refused to fly: his body was tortured with sciatic pains;<sup>‡</sup> his mind was enfeebled by

\* In their clamour against Maurice, the people of Constantinople branded him with the name of Maximian or Maximianus: a heresy, says Theophylact, l. viii. c. 79. *per se non posset appellari, sed et sic appellabatur*. Did they only cast out a vague reproach—or had the emperor really listened to some obscure teacher of those ancient Gospels?

† The church of St. Autonomus (whom I have not the honour to know) was 130 stadia from Constantinople, (Theophylact, l. viii. c. 79.) The port of Burroplan, where Maurice and his children were murdered, is described by C. Bles, *de Bosphoro Thracico*, l. 10, c. 15, as one of the two harbours of Chalcedon.

‡ The inhabitants of Constantinople were generally subject to the *venæ epidemicæ*; and Theophylact testifies, O. viii. c. 73, that if it were consistent with the rules of history, he could assign the medical cause. Yet such a digression would not have been more superfluous than his inquiry O. vii. c. 16, 17) into the annual inundations of the Nile, and all the opinions of the Greek philosophers on that subject.

superstition; he patiently awaited the event of the revolution, and addressed a fervent and public prayer to the Almighty, that the punishment of his sins might be inflicted in this world rather than in a future life. After the abdication of Maurice, the two factions disputed the choice of an emperor; but the favourite of the blues was rejected by the jealousy of their antagonists, and Germanus himself was hurried along by the crowds, who rushed to the palace of Hebdomon, seven miles from the city, to adore the majesty of Phocas the centurion. A modest wish of resigning the purple to the rank and merit of Germanus was opposed by his resolution, more obstinate and equally sincere: the senate and clergy obeyed his summons, and as soon as the patriarch was assured of his orthodox belief, he consecrated the successful usurper in the church of St. John the Baptist. On the third day, amidst the acclamations of a thoughtless people, Phocas made his public entry in a chariot drawn by four white horses: the revolt of the troops was rewarded by a lavish donative, and the new sovereign, after visiting the palace, beheld from his throne the games of the hippodrome. In a dispute of precedence between the two factions, his partial judgment inclined in favour of the greens. "Remember that Maurice is still alive," resounded from the opposite side; and the indiscreet clamour of the blues admonished and stimulated the cruelty of the tyrant. The ministers of death were despatched to Chalcidon: they dragged the emperor from his sanctuary; and the five sons of Maurice were successively murdered before the

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Death of  
Maurice  
and his  
children.  
A. D. 602,  
Nov. 27.

eyes of their agonizing parent. At each stroke which he felt in his heart, he found strength to renounce a pious ejaculation.—“Thou art just, O Lord! and thy judgments are righteous.” And such, in the last moments, was his rigid attachment to truth and justice, that he revealed to the soldiers the pious falsehood of a nurse who presented her own child in the place of a royal infant.\* The tragic scene was finally closed by the execution of the emperor himself, in the twentieth year of his reign, and the sixty-third of his age. The bodies of the father and his five sons were cast into the sea; their heads were exposed at Constantinople to the insults or pity of the multitude, and it was not till some signs of putrefaction had appeared, that Phocas connived at the private burial of these venerable remains. In that grave, the faults and errors of Maurice were kindly interred. His fate alone was remembered; and at the end of twenty years, in the recital of the history of Theophylact, the mournful tale was interrupted by the tears of the audience.†

Phocas  
emperor.  
A. D. 602,  
Nov. 28.

Such tears must have flowed in secret, and such compassion would have been criminal, under the

\* From this generous attempt, Casselle has deduced the intricate web of his tragedy of *Héraclius*, which requires more than one representation to be clearly understood, (*Casselle de Vallang*, tom. 2, p. 200); and which, after an interval of some years, he said to have pardoned the author himself (*Anecdotes Dramatiques*, tom. 1, p. 422).

† The revolt of Phocas and death of Maurice are told by Theophylact Simocatta, li. viii. c. 7-12; the *Passal Chronicle*, (p. 315, 316); Theophares, (*Chronograph.* p. 298-299); Zonaras, (tom. 7, l. 219) (p. 71-80), and Cedrenus, p. 299-304).

reign of Phocas, who was peaceably acknowledged in the provinces of the East and West. The images of the emperor and his wife Leontia were exposed in the Lateran to the veneration of the clergy and senate of Rome, and afterwards deposited in the palace of the Caesars, between those of Constantine and Theodosius. As a subject and a Christian, it was the duty of Gregory to acquiesce in the established government, but the joyful applause with which he salutes the fortune of the assassin, has sullied with indelible disgrace the character of the saint. The successor of the apostles might have inculcated with decent firmness the guilt of blood, and the necessity of repentance; he is content to celebrate the deliverance of the people and the fall of the oppressor; to rejoice that the piety and benignity of Phocas have been raised by Providence to the imperial throne; to pray that his hands may be strengthened against all his enemies; and to express a wish, perhaps a prophecy, that, after a long and triumphant reign, he may be transferred from a temporal to an everlasting kingdom.\* I have already traced the steps of a revolution so pleasing, in Gregory's opinion, both to heaven and earth; and Phocas does not appear less hateful in the exercise than in the acquisition of

\* *Gregor. I. xl. epist. 38. index. vi.* Benignitatem vestram placitis ad imperiale fastigium pervenisse gaudemus. Lactentis oculi et exultant iura, et de vestris benignis actibus universae reipublice populus vester nunquam satietur assuetus hilarum, &c. This last sentence, the trope of protestant interpreters, is justly censured by the philosopher Bayle, (*Dictionnaire Critique, Gregoire I. Sect. II. tom. II. p. 397, 398*). Cardinal Baronius justifies the pope at the expense of the fallen emperor.



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 THE CHIL-  
 DREN.

power. The pencil of an impartial historian has delineated the portrait of a monster;\* his diminutive and deformed person, the closeness of his sluggish eye-brows, his red hair, his beardless chin, and his cheek disfigured and discoloured by a formidable scar. Ignorant of letters, of laws, and even of arms, he indulged in the supreme rank a more ample privilege of lust and drunkenness; and his brutal pleasures were either injurious to his subjects or disgraceful to himself. Without assuming the office of a prince, he renounced the profession of a soldier: and the reign of Phocas afflicted Europe with ignominious peace, and Asia with desolating war. His savage temper was inflamed by passion, hardened by fear, exasperated by resistance or reproach. The flight of Theodosius to the Persian court had been intercepted by a rapid pursuit, or a deceitful message: he was beheaded at Nice, and the last hours of the young prince were soothed by the comforts of religion and the consciousness of innocence. Yet his phantom disturbed the repose of the usurper: a whisper was circulated through the East, that the son of Mauricius was still alive: the people expected their avenger; and the widow and daughters of the late emperor would have adopted as their son and brother the vilest of mankind. In the massacre of the imperial family,<sup>†</sup> the mercy, or rather the

\* The images of Phocas were destroyed; but even the malice of his enemies would suffer one copy of such a portrait or caricature (Constant, p. 104) to escape the flames.

† The family of Maurice is represented by Ducange, (*Familie Byzantine*, p. 106, 107, 108): his eldest son Theodosius had been crowned

discretion, of Phocas, had spared these unhappy females, and they were decently confined to a private house. But the spirit of the empress Constantina, still mindful of her father, her husband, and her sons, aspired to freedom and revenge. At the dead of night, she escaped to the sanctuary of St. Sophia; but her tears, and the gold of her associate Germanus, were insufficient to provoke an insurrection. Her life was forfeited to revenge, and even to justice: but the patriarch obtained and pledged an oath for her safety; a monastery was allotted for her prison, and the widow of Maurice accepted and abused the lenity of his assassin. The discovery or the suspicion of a second conspiracy, dissolved the engagements and rekindled the fury of Phocas. A matron who commanded the respect and pity of mankind, the daughter, wife, and mother of emperors, was tortured like the vilest malefactor, to force a confession of her designs and associates; and the empress Constantina, with her three innocent daughters, was beheaded at Chalcedon, on the same ground which had been stained with the blood of her husband and five sons. After such an example, it would be superfluous to enumerate the names and sufferings of meaner victims. Their condemnation was seldom preceded by the forms of trial, and their punishment was embittered by the refinements of cruelty: their eyes were pierced, their tongues

and ty-  
ranny.

*constant emperor when he was no more than four years and a half old, and he is always joined with his father in the edicts of Gregory. With the Christian daughters, Anastasia and Theoctista, I am surprised to find the pages *Life of Constantine*.*

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were torn from the root, the hands and feet were amputated; some expired under the lash, others in the flames, others again were transfix'd with arrows; and a simple speedy death was mercy which they could rarely obtain. The hippodrome, the sacred asylum of the pleasures and the liberty of the Romans, was polluted with heads and limbs and mangled bodies; and the companions of Phocas were the most sensible, that neither his favour, nor their services, could protect them from a tyrant, the worthy rival of the Caligulas and Domitians of the first age of the empire.\*

His fall  
and death,  
A. D. 610,  
October 6.

A daughter of Phocas, his only child, was given in marriage to the patrician Crispus,† and the royal images of the bride and bridegroom were indiscreetly placed in the circus, by the side of the emperor. The father must desire that his posterity should inherit the fruit of his crimes, but the monarch was offended by this premature and popular association: the tribunes of the green faction, who accused the officious error of their sculptors, were condemned to instant death: their lives were granted to the prayers of the people; but Crispus might reasonably doubt whether a jealous usurper could forget and pardon his involuntary

\* Some of the cruelties of Phocas are marked by Theophylact, l. viii. c. 13, 14, 15. George of Pacha, the poet of Heraclius, styles him (Hyll Anakum, p. 48; Bonn, 1773) *rex episcopus* (Bishop-king, *tyrannus rex*, *tyrannus rex*). The latter epithet is just—but the corrupter of life was easily vanquish'd.

† In the writers, and in the copies of those writers, there is much hesitation between the names of *Phocas* and *Crispus*. (Dunage, *Fam. Byzant.* p. 111.) that I have been tempted to identify the son-in-law of Phocas with the hero five times victorious over the Arabs.

competition. The green faction was alienated by the ingratitude of Phocas and the loss of their privileges; every province of the empire was ripe for rebellion; and Heraclius, exarch of Africa, persisted above two years in refusing all tribute and obedience to the centurion who disgraced the throne of Constantinople. By the secret emissaries of Crispus and the senate, the independent exarch was solicited to save and to govern his country: but his ambition was chilled by age, and he resigned the dangerous enterprise to his son Heraclius, and to Nicetas, the son of Gregory his friend and lieutenant. The powers of Africa were armed by the two adventurous youths; they agreed that the one should navigate the fleet from Carthage to Constantinople, that the other should lead an army through Egypt and Asia, and that the imperial purple should be the reward of diligence and success. A faint rumour of their undertaking was conveyed to the ears of Phocas, and the wife and mother of the younger Heraclius were secured as the hostages of his faith: but the treacherous art of Crispus extenuated the distant peril, the means of defence were neglected or delayed, and the tyrant supinely slept till the African navy cast anchor in the Hellespont. Their standard was joined at Abidus by the fugitives and exiles who thirsted for revenge; the ships of Heraclius, whose lofty masts were adorned with the holy symbols of religion,<sup>a</sup> steered their triumphant course through

<sup>a</sup> According to Theophanes, *adversus* and *contra* *tyrannos*. *Catechismi* edidit *anagignoscentis* *uocis* *uocem*, which Heraclius bore as a banner in the first Persian expedition. See George Pict. August 1, 240. The inscription

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HERACLIUS.

the Propontis; and Phocas beheld from the windows of the palace, his approaching and inevitable fate. The green faction was tempted, by gifts and promises, to oppose a feeble and fruitless resistance to the landing of the Africans; but the people, and even the guards, were determined by the well-timed defection of Crispus; and the tyrant was seized by a private enemy, who boldly invaded the solitude of the palace. Stripped of the diadem and purple, clothed in a vile habit, and loaded with chains, he was transported in a small boat to the imperial galley of Heraclius, who reproached him with the crimes of his abominable reign. "Wilt thou govern better?" were the last words of the despair of Phocas. After suffering each variety of insult and torture, his head was severed from his body, the mangled trunk was cast into the flames, and the same treatment was inflicted on the statues of the vain usurper, and the seditious banner of the green faction. The voice of the clergy, the senate, and the people, invited Heraclius to ascend the throne which he had purified from guilt and ignominy; after some graceful hesitation he yielded to their entreaties. His coronation was accompanied by that of his wife Eudoxia; and their posterity, till the fourth generation, continued to reign over the empire of the East. The voyage of Heraclius had been easy and prosperous, the tedious march of Nicetas was not accomplished before the decision of the con-

Reign of  
Heraclius,  
A. D. 610,  
Oct. 5—  
A. D. 642,  
Feb. 11.

circumstances seems to have diminished; but Foggiet, the Roman editor, (p. 26), is at a loss to determine whether this picture was an original or a copy.



test: but he submitted without a murmur to the fortune of his friend, and his laudable intentions were rewarded with an equestrian statue, and a daughter of the emperor. It was more difficult to trust the fidelity of Crispus, whose recent services were recompensed by the command of the Cappadocian army. His arrogance soon provoked, and seemed to excuse, the ingratitude of his new sovereign. In the presence of the senate, the son-in-law of Phocas was condemned to embrace the monastic life; and the sentence was justified by the weighty observation of Heraclius, that the man who had betrayed his father, could never be faithful to his friend.<sup>3</sup>

Even after his death the republic was afflicted by the crimes of Phocas, which armed with a pious cause the most formidable of her enemies. According to the friendly and equal forms of the Byzantine and Persian courts, he announced his exaltation to the throne; and his ambassador Lifinus, who had presented him with the heads of Maurice and his sons, was the best qualified to describe the circumstances of the tragic scene.<sup>4</sup> However it might be varnished by fiction or so-

Phocas  
invades  
the Roman  
empire,  
A. D. 603,  
&c.

<sup>3</sup> See the tyranny of Phocas and the elevation of Heraclius, in Chron. Paschal, p. 380-383; Theophanes, p. 242-250; Nicephorus, p. 5-7; Cedrenus, p. 404-407; Zozarus, tom. ii. l. xiv, p. 80-82.

<sup>4</sup> Theophanes, l. vii, c. 15. The life of Maurice was composed about the year 626, (l. viii, c. 13), by Theophylact Simocatta, an-epistat, a native of Egypt. Photius, who gives us ample extracts of the work (Cod. iiv, p. 81-100), gently reproves the affectation and allegory of the style. His preface is a dialogue between Philosophy and History; they meet themselves under a plane-tree, and the latter teaches her lyrics.

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phistry, Chosroes turned with horror from the assassin, imprisoned the pretended envoy, disclaimed the usurper, and declared himself the avenger of his father and benefactor. The sentiments of grief and resentment which humanity would feel, and honour would dictate, promoted, on this occasion, the interest of the Persian king; and his interest was powerfully magnified by the national and religious prejudices of the Magi and satraps. In a strain of artful adulation, which assumed the language of freedom, they presumed to censure the excess of his gratitude and friendship for the Greeks; a nation with whom it was dangerous to conclude either peace or alliance: whose superstition was devoid of truth and justice, and who must be incapable of any virtue, since they could perpetrate the most atrocious of crimes, the impious murder of their sovereign.<sup>3</sup> For the crime of an ambitious centurion, the nation which he oppressed was chastised with the calamities of war; and the same calamities, at the end of twenty years, were retaliated and redoubled on the heads of the Persians.<sup>4</sup> The ge-

<sup>3</sup> *Christiani esse pactum esse, nec illis esse sedus . . . quod si illa illis scien fuerit, regem suum non occiderent.* Eusebii. *Anales*, tom. II. p. 211, vers. Pusek.

<sup>4</sup> We must now, for some ages, take our leave of contemporary history, and descend, if it be a descent, from the affluence of chronic to the rude simplicity of chronicle and abridgments. Those of Theophanes, (*Chronograph.* p. 244-272) and Nicephorus, pp. 3-116, supply a regular, but imperfect, view of the Persian war; and for any additional facts I quote my special authorities. Theophanes, a courtier who became a monk, was born A. D. 749; Nicephorus, patriarch of Constantinople, who died A. D. 829, was somewhat younger; they both suffered in the cause of images. *Haskins de scriptoribus Byzantinis*, p. 200-246.

neral who had restored Chosroes to the throne still commanded in the East; and the name of Narses was the formidable sound with which the Assyrian mothers were accustomed to terrify their infants. It is not improbable, that a native subject of Persia should encourage his master and his friend to deliver and possess the provinces of Asia. It is still more probable, that Chosroes should animate his troops by the assurance that the sword which they dreaded the most would remain in its scabbard, or be drawn in their favour. The hero could not depend on the faith of a tyrant; and the tyrant was conscious how little he deserved the obedience of an hero: Narses was removed from his military command; he reared an independent standard at Hierapolis in Syria: he was betrayed by fallacious promises, and burnt alive in the market-place of Constantinople. Deprived of the only chief whom they could fear or esteem, the hands which he had led to victory were twice broken by the cavalry, trampled by the elephants, and pierced by the arrows of the barbarians; and a great number of the captives were beheaded on the field of battle by the sentence of the victor, who might justly condemn these seditious mercenaries as the authors or accomplices of the death of Maurice. Under the reign of Phocas, the fortifications of Merdin, Dara, Amida, and Edessa, were successively besieged, reduced, and destroyed, by the Persian monarch: he passed the Euphrates, occupied the Syrian cities, Hierapolis, Chalehis, and Berrhan or Aleppo, and soon encompassed the walls of Antioch with his

His conquest of Syria.  
A. D. 611:

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XLVI.

irresistible arms. — The rapid tide of success discloses the decay of the empire, the incapacity of Phocas, and the disaffection of his subjects; and Chosroes provided a decent apology for their submission or revolt, by an impostor who attended his camp, as the son of Maurice<sup>a</sup> and the lawful heir of the monarchy.

The first intelligence from the East which Heraclius received,\* was that of the loss of Antioch; but the aged metropolis, so often overturned by earthquakes and pillaged by the enemy, could supply but a small and languid stream of treasure and blood. The Persians were equally successful and more fortunate in the sack of Caesarea, the capital of Cappadocia; and as they advanced beyond the ramparts of the frontier, the boundary of ancient war, they found a less obstinate resistance and a more plentiful harvest. The pleasant vale of Damascus has been adorned in every age with a royal city: her obscure felicity has hitherto escaped the historian of the Roman empire: but Chosroes reposed his troops in the paradise of Damascus before he ascended

<sup>a</sup> The Persian historians have been throughout deceived; but Theophrastus (p. 244) accuses Chosroes of the fraud and falsehood; and Eutychius believes (*Annal. tom. ii. p. 211*) that the son of Maurice, who was saved from the massacre, lived and died a monk, on mount Sinai.

\* Eutychius dates all the losses of the empire under the reign of Phocas, an error which saves the honour of Heraclius, whom he brings not from Carthage, but Salaman, with a fleet laden with vegetables for the relief of Constantinople, (*Annal. tom. ii. p. 211, 212*). The other Christian writers of the East, Barhebraeus, (*apud Asseman. Bibliothec. Orient. tom. vi. p. 412, 413*), Eusebius, (*Hist. Sacram. p. 12-13*), Abulpharagus, (*Dynast. p. 98, 99*), are more sincere and accurate. The years of the Persian war are disposed in the chronology of Page.

the hills of Libanus, or invaded the cities of the Phœnician coast. The conquest of Jerusalem,\* which had been meditated by Nushirvan, was achieved by the zeal and avarice of his grandson; the ruin of the proudest monument of Christianity was vehemently urged by the intolerant spirit of the Magi; and he could enlist, for this holy warfare, an army of six and twenty thousand Jews, whose furious bigotry might compensate, in some degree, for the want of valour and discipline. After the reduction of Galilee, and the region beyond the Jordan, whose resistance appears to have delayed the fate of the capital, Jerusalem itself was taken by assault. The sepulchre of Christ, and the stately churches of Helena and Constantine, were consumed, or at least damaged, by the flames; the devout offerings of three hundred years were rifled in one sacrilegious day; the patriarch Zachariah, and the true cross, were transported into Persia; and the massacre of ninety thousand Christians is imputed to the Jews and Arabs who swelled the disorder of the Persian march. The fugitives of Palestine were entertained at Alexandria by the charity of John the archbishop, who is distinguished among a crowd of saints by the epithet of *almsh-giver*;<sup>†</sup> and the revenues of the church, with a

GRÆC.  
XLVI.  
.....  
of Pal-  
1195, A. D.  
614-1

\* On the conquest of Jerusalem, so event so interesting to the church, see the Annals of Eusebius, lib. 10, p. 212-220, and the description of the monk Antholius, (apud Baronium, Annal. Eccles. A. D. 612, N. 36-46), whose one hundred and twenty-four chapters are sufficient, if what in one verse may be said to be extant.

† The life of this worthy saint is composed by Isidore, a contemporary bishop; and I find in Baronius, (Annal. Eccles. A. D. 619, N. 10,



CHAP.  
XLVI  
*Continued.*

of Egypt,  
A. D. 616:

of Asia  
Minor,  
A. D. 616,  
&c.

treasure of three hundred thousand pounds, were restored to the true proprietors, the poor of every country and every denomination. But Egypt itself, the only province which had been exempt, since the time of Diocletian, from foreign and domestic war, was again subdued by the successors of Cyrus. Pelusium, the key of that impervious country, was surprised by the cavalry of the Persians: they passed, with impunity, the innumerable channels of the Delta, and explored the long valley of the Nile, from the pyramids of Memphis to the confines of Æthiopia. Alexandria might have been relieved by a naval force, but the archbishop and the prefect embarked for Cyprus; and Chosroes entered the second city of the empire, which still preserved a wealthy remnant of industry and commerce. His western trophy was erected, not on the walls of Carthage,<sup>1</sup> but in the neighbourhood of Tripoli: the Greek colonies of Cyrene were finally extirpated; and the conqueror, treading in the footsteps of Alexander, returned in triumph through the sands of the Lybian desert. In the first campaign, another army advanced from the Euphrates to the Thracian Bosphorus; Chalcedon surrendered after a long siege, and a Persian camp was maintained above ten years in the presence of Constantinople. The sea-coast of Pontus,

Nº. 10, Arx, and Fleury, (item viii), p. 222-240, sufficient assurance of this edifying work.

<sup>1</sup> The error of Barceus, and many others who have carried the name of Chosroes to Carthage instead of Chalcedon, is founded on the most ridiculous of the Greek words Καρχήσιον and Καρχήσιον, in the text of Theophrastus, &c. which have been sometimes confounded by some writers and sometimes by caprice.

the city of Ancyra, and the Isle of Rhodes, are enumerated among the last conquests of the great king; and if Chosroes had possessed any maritime power, his boundless ambition would have spread slavery and desolation over the provinces of Europe.

*His years  
and mag-  
nificence*

From the long disputed banks of the Tigris and Euphrates, the reign of the grandson of Nushirvan was suddenly extended to the Hellespont and the Nile, the ancient limits of the Persian monarchy. But the provinces, which had been fashioned by the habits of six hundred years to the virtues and vices of the Roman government, supported with reluctance the yoke of the barbarians. The idea of a republic was kept alive by the institutions, or at least by the writings, of the Greeks and Romans, and the subjects of Heraclius had been educated to pronounce the words of liberty and law. But it has always been the pride and policy of oriental princes, to display the titles and attributes of their omnipotence; to upbraid a nation of slaves with their true name and abject condition; and to enforce, by cruel and insolent threats, the rigour of their absolute commands. The Christians of the East were scandalized by the worship of fire, and the impious doctrine of the two principles; the Magi were not less intolerant than the bishops, and the martyrdom of some native Persians, who had deserted the religion of Zoroaster,\* was conceived to

\* The genuine acts of St. Ambrose are published as those of the fifth general council, from whence Baronsius, (Annal. Eccles. A. D. 614, 616, 617,) and Butler, (Lives of the Saints, vol. 1, p. 232-249,) have

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be the prelude of a fierce and general persecution. By the oppressive laws of Justinian, the adversaries of the church were made the enemies of the state; the alliance of the Jews, Nestorians, and Jacobites, had contributed to the success of Chosroes, and his partial favour to the unitaries provoked the hatred and fears of the catholic clergy. Conscious of their fear and hatred, the Persian conqueror governed his new subjects with an iron scepter: and as if he suspected the stability of his dominion, he exhausted their wealth by exorbitant tributes and licentious rapine, despoiled or demolished the temples of the East, and transported to his hereditary realms the gold, the silver, the precious marbles, the arts, and the artists of the Asiatic cities. In the obscure picture of the calamities of the empire,\* it is not easy to discern the figure of Chosroes himself, to separate his actions from those of his lieutenants, or to ascertain his personal merit in the general blaze of glory and magnificence. He enjoyed with ostentation the fruits of victory, and frequently retired from the hardships of war to the luxury of the palace. But in the space of twenty-four years, he was deterred by superstition or resentment from approaching the gates of Ctesiphon: and his favourite residence of Artemita, or Dastagerd, was situate beyond the Tigris, about

have taken their moorings. The holy martyr escaped from the Persians to the Roman army, became a monk in Jerusalem, and assumed the monachy of the Mehi, which was then established at Caesarea in Palestine.

\* *Geographica*, *Hydrog.* p. 224. *Historia*, *Nov. Sacrorum* p. 70.

sixty miles to the north of the capital. The adjacent pastures were covered with flocks and herds: the paradise or park was replenished with pheasants, peacocks, ostriches, roebucks, and wild boars, and the noble game of lions and tigers was sometimes turned loose for the bolder pleasures of the chase. Nine hundred and sixty elephants were maintained for the use or splendour of the great king: his tents and baggage were carried into the field by twelve thousand great camels and eight thousand of a smaller size; and the royal stables were filled with six thousand mules and horses, among whom the names of *Sheldiz* and *Barid* are renowned for their speed or beauty. Six thousand guards successively mounted before the palace-gate; the service of the interior apartments was performed by twelve thousand slaves, and in the number of three thousand virgins, the fairest of Asia, some happy concubine might console her master for the age or the indifference of *Sira*. The various treasures of gold, silver, gems, silk, and aromatics, were deposited in an hundred subterraneous vaults; and the chamber *Badaverd* denoted the accidental gift of the winds which had wafted the spoils of *Heraclius* into one of the Syrian harbours of his rival. The voice of flattery, and perhaps of fiction, is not

\* D'Anville, *Mém. de l'Académie des Inscriptions*, tom. XLII, p. 298-311.

\* The difference between the two sorts consists in one or two humps; the *drumodary* has only one; the size of the proper camel is larger; the country he comes from, *Turkistan* or *Bactrian*; the *drumodary* is confined to Arabia and Africa. *Raffin, Hist. Naturelle*, tom. II, p. 311, &c. *Aristot. Hist. Animal*, tom. I, l. II, c. 12, tom. II, p. 183.

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ashamed to compute the thirty thousand rich hangings that adorned the walls, the forty thousand columns of silver, or more probably of marble, and plated wood, that supported the roof; and the thousand globes of gold suspended in the dome, to imitate the motions of the planets and the constellations of the zodiac.\* While the Persian monarch contemplated the wonders of his art and power, he received an epistle from an obscure citizen of Mecca, inviting him to acknowledge Mahomet as the apostle of God. He rejected the invitation, and tore the epistle. "It is thus," exclaimed the Arabian prophet, "that God will tear the kingdom, and reject the supplications, of Chosroes."† Placed on the verge of the two great empires of the East, Mahomet observed with secret joy the progress of their mutual destruction; and in the midst of the Persian triumphs, he ventured to foretel, that before many years should elapse, victory would again return to the banners of the Romans.‡

\* Theophanes, *Chronograph.* p. 568. D'Hérbeur, *Ephéméride Constantin.* p. 997. The Greeks describe the luxury, the Famine the splendour, of Dastigird; but the former speak from the modest witness of the eye, the latter from the vague report of the ear.

† The *Historians of Mahomet*, Abulpharaz (to Vol. Mohammed, p. 92, 93), and Gagnier, (*Vie de Mahomet*, tom. II, p. 343), date this embassy in the sixth year of the Hegira, which commences A. D. 628, May 11. Their chronology is erroneous, since Chosroes died in the month of February of the same year, (Fagel, *Critica*, tom. I, p. 779). The *comte de Bunsen* (*Vie de Mahomet*, p. 327, 328) places this embassy about A. D. 615, soon after the conquest of Palestine. Yet Mahomet would scarcely have ventured so soon on so bold a step.

‡ See the sixth chapter of the Koran, entitled *de Græcis*, that Vincent and several translators have, (p. 325, 331), lately changed this expression,



At the time when this prediction is said to have been delivered, no prophecy could be more distant from its accomplishment, since the first twelve years of Heraclius announced the approaching dissolution of the empire. If the motives of Chosroes had been pure and honourable, he must have ended the quarrel with the death of Phocas, and he would have embraced, as his best ally, the fortunate African who had so generously avenged the injuries of his benefactor Maurice. The prosecution of the war revealed the true character of the barbarian; and the suppliant embassies of Heraclius to beseech his clemency, that he would spare the innocent, accept a tribute, and give peace to the world, were rejected with contemptuous silence or insolent menace. Syria, Egypt, and the provinces of Asia, were subdued by the Persian arms, while Europe, from the confines of Istria to the long wall of Thrace, was oppressed by the Avars, unsatiated with the blood and rapine of the Italian war. They had coolly massacred their male captives in the sacred field of Pannonia; the women and children were reduced to servitude, and the noblest virgins were abandoned to the promiscuous lust of the barbarians. The amorous matron who opened the gates of Friuli passed a short night in the arms of her royal lover; the next evening, Romilda was condemned to the embraces of twelve Avars, and the third day the Lombard princess was im-

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Distrust of  
Heraclius,  
A. D. 610-  
622.

justice, guess, wager, of Mahomet; but Boissier (Hist. p. 323-344), with wicked intentions, labours to establish this evident prophecy of a future event, which himet, in his opinion, embarrasses the Christian polemics.

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paled in the sight of the camp, while the chagan observed with a cruel smile, that such a husband was the fit recompence of her lewdness and perfidy.\* By these implacable enemies, Heraclius, on either side, was insulted and besieged: and the Roman empire was reduced to the walls of Constantinople, with the remnant of Greece, Italy, and Africa, and some maritime cities, from Tyre to Trebizond, of the Asiatic coast. After the loss of Egypt, the capital was afflicted by famine and pestilence; and the emperor, incapable of resistance, and hopeless of relief, had resolved to transfer his person and government to the more secure residence of Carthage. His ships were already laden with the treasures of the palace, but his flight was arrested by the patriarch, who armed the powers of religion in the defence of his country, led Heraclius to the altar of St. Sophia, and extorted a solemn oath, that he would live and die with the people whom God had intrusted to his care. The chagan was encamped in the plains of Thrace, but he dissembled his perfidious designs, and solicited an interview with the emperor near the town of Heraclea. Their reconciliation was celebrated with equestrian games; the senate and people in their gayest apparel resorted to the festival of peace, and the Avars beheld, with envy and desire, the spectacle of Roman luxury. On a sudden, the hippodrome was encompassed by the Scythian cavalry, who had pressed their secret and nocturnal

\* Paul Warneford, *de Gestis Langobardorum*, l. 17, c. 27, 32. Muratori, *Annali d'Italia*, tom. v. p. 308, &c.

march: the tremendous sound of the chagan's whip gave the signal of the assault; and Heraclius, wrapping his diadem round his arm, was saved, with extreme hazard, by the fleetness of his horse. So rapid was the pursuit, that the Avars almost entered the golden gate of Constantinople with the flying crowds;<sup>b</sup> but the plunder of the suburbs rewarded their treason, and they transported beyond the Danube, two hundred and seventy thousand captives. On the shore of Chalcedon, the emperor held a safer conference with a more honourable foe, who, before Heraclius descended from his galley, saluted with reverence and pity the majesty of the purple. The friendly offer of *He solicits* Sain the Persian general, to conduct an embassy *peace.* to the presence of the great king, was accepted with the warmest gratitude, and the prayer for pardon and peace was humbly presented by the pretorian prefect, the prefect of the city, and one of the first ecclesiastics of the patriarchal church.<sup>c</sup> But the lieutenant of Chosroes had fatally mistaken the intentions of his master. "It was not an embassy," said the tyrant of Asia, "it was the person of Heraclius, bound in chains, that he should have brought to the foot of my throne. I will never give peace to the emperor of Rome

<sup>b</sup> The *Paschal Chronicle*, which sometimes introduces fragments of history into a barren list of months and days, gives the best account of the invasion of the Avars, p. 289, 290. The number of captives is added by Nicephorus.

<sup>c</sup> Some original pieces, such as the speech or letter of the Roman ambassadors, (p. 382-388), likewise mention the merit of the *Paschal Chronicle*, which was composed, perhaps at Alexandria, under the reign of Heraclius.

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"till he has abjured his crucified God, and embraced the worship of the sun." Sain was flayed alive, according to the inhuman practice of his country; and the separate and rigorous confinement of the ambassadors, violated the laws of nations and the faith of an express stipulation. Yet the experience of six years at length persuaded the Persian monarch to renounce the conquest of Constantinople, and to specify the annual tribute or ransom of the Roman empire: a thousand talents of gold, a thousand talents of silver, a thousand silk robes, a thousand horses, and a thousand virgins. Heraclius subscribed these ignominious terms, but the time and space which he obtained to collect such treasures from the poverty of the East, was industriously employed in the preparations of a bold and desperate attack.

His preparations for war, A. D. 621.

Of the characters conspicuous in history, that of Heraclius is one of the most extraordinary and inconsistent. In the first and last years of a long reign, the emperor appears to be the slave of sloth, of pleasure, or of superstition, the careless and impotent spectator of the public calamities. But the languid mists of the morning and evening are separated by the brightness of the meridian sun: the Arcadius of the palace, grows the Caesar of the camp; and the honour of Rome and Heraclius was gloriously retrieved by the exploits and trophies of six adventurous campaigns. It was the duty of the Byzantine historians to have revealed the causes of his slumber and vigilance. At this distance we can only conjecture, that he was endowed with more

personal courage than political resolution; that he was detained by the charms, and perhaps the arts, of his niece Martina, with whom, after the death of Eudocia, he contracted an incestuous marriage;\* and that he yielded to the base advice of the counsellors, who urged as a fundamental law, that the life of the emperor should never be exposed in the field.<sup>†</sup> Perhaps he was awakened by the last insolent demand of the Persian conqueror; but at the moment when Heraclius assumed the spirit of an hero, the only hopes of the Romans were drawn from the vicissitudes of fortune, which might threaten the proud prosperity of Chosroes, and must be favourable to those who had attained the lowest period of depression.<sup>‡</sup> To provide for the expences of war, was the first care of the emperor; and for the purpose of collecting the tribute, he was allowed to solicit the benevolence of the eastern provinces. But the revenue

4. *Strophomena*, pp. 10, 141, who bounds this marriage with the entry of afternoon and afternoon, is happy to observe, that of the sons, its incessant truth, the elder was marked by providence with a stiff neck, the younger with the loss of hearing.

\* George of Podolia (Akrout), 112-123, p. 53, who states the opinion, acquits the pusillanimous conductors of any sinister views. Would he have exposed the proud and contemptuous admiration of Eugene? Embarrassed in the hands of an unscrupulous baronet, and the steps of a woman's house.

Εν τῇ αὐτῇ ἡμέρᾳ ἀπέθανε ὁ βασιλεὺς  
 Ἡρακλῆς ἀποφασίζων ὅτι οὐκ ἔστιν  
 ἔτι καὶ ἄλλος ἐκ τῶν βασιλέων  
 Ἀποφασίζων δὲ, κ.κ.

George Fitch Adams, 1, 31, No. p. 4.  
The Orientals are not less fond of remarking this strange structure;  
and I remember some story of Khac-n-Pan's, not very unlike the  
ring of Palmyra of Samos.



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no longer flowed in the usual channels; the credit of an arbitrary prince is annihilated by his power; and the courage of Heraclius was first displayed in daring to borrow the consecrated wealth of churches, under the solemn vow of restoring, with usury, whatever he had been compelled to employ in the service of religion and of the empire. The clergy themselves appear to have sympathised with the public distress, and the discreet patriarch of Alexandria, without admitting the precedent of sacrilege, assisted his sovereign by the miraculous or reasonable revelation of a secret treasure.\* Of the soldiers who had conspired with Phocas, only two were found to have survived the stroke of time and of the barbarians;† the loss, even of these seditious veterans, was imperfectly supplied by the new levies of Heraclius, and the gold of the sanctuary united in the same camp, the names, and arms, and languages, of the East and West. He would have been content with the neutrality of the Avars; and his friendly entreaty that the chagan would act, not as the enemy but as the guardian of the empire, was accompanied with a more persuasive donative of two hundred thousand pieces of gold.

\* Barceus gravely relates this discovery, or rather transmutation, of brass, not of silver, but of gold. (Athen. Emend. A. D. 670, N. 3. &c.) Yet the loss was arbitrary, since it was collected by soldiers, who were ordered to leave the patriarch of Alexandria no more than one hundred pounds of gold. Nicephorus, (p. 118) two hundred years afterwards, speaks with ill humours of this contribution; which the church of Constantinople might still feel.

† Theophylact Simocatta, l. viii. c. 12. This circumstance need not excite our surprise. The number-rod of a regiment, even in times of peace, is renewed in less than twenty or twenty-five years.

Two days after the festival of Easter, the emperor, exchanging his purple for the simple garb of a penitent and warrior,<sup>1</sup> gave the signal of his departure. To the faith of the people Heraclius recommended his children; the civil and military powers were vested in the most deserving hands, and the discretion of the patriarch and senate was authorized to save or surrender the city, if they should be oppressed in his absence by the superior forces of the enemy.

The neighbouring heights of Chalcedon were covered with tents and arms: but if the new levies of Heraclius had been rashly led to the attack, the victory of the Persians in the sight of Constantinople might have been the last day of the Roman empire. As imprudent would it have been to advance into the provinces of Asia, leaving their innumerable cavalry to intercept his convoys, and continually to hang on the tail and disorder of his rear. But the Greeks were still masters of the sea; a fleet of galleys, transports, and storeships, was assembled in the harbour: the barbarians consented to embark; a steady wind carried them through the Hellespont; the western and southern coast of Asia Minor lay on their left hand; the spirit of their chief was first displayed in a storm; and even the eunuchs of his train were excited to suffer and to work by the example of their master. He landed his troops on the confines of Syria and Cilicia, in the gulph of Scanderoon, where the coast

First expedition of Heraclius against the Persians, A. D. 622.

<sup>1</sup> He changed his purple, for black habit, and dyed them red in the blood of the Persians, (Georg. Paph. Agrost. III. 118. 121, 122. See the Notes of Poggini, p. 25.)

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suddenly turns to the south;<sup>1</sup> and his discernment was expressed in the choice of this important post.<sup>2</sup> From all sides, the scattered garrisons of the maritime cities and the mountains might repair with speed and safety to his imperial standard. The natural fortifications of Cilicia protected, and even concealed, the camp of Heraclius, which was pitched near Issus, on the same ground where Alexander had vanquished the host of Darius. The angle which the emperor occupied, was deeply indented into a vast semicircle of the Asiatic, Armenian, and Syrian provinces; and to whatsoever point of the circumference he should direct his attack, it was easy for him to dissemble his own motions, and to prevent those of the enemy. In the camp of Issus, the Roman general reformed the sloth and disorder of the veterans, and educated the new recruits in the knowledge and practice of mili-

<sup>1</sup> George of Pisidia (Acron. ii. 10, p. 8) has fixed this important point of the Syrian and Cilician gates. They are elegantly described by Xenophon, who marched through them a thousand years before. A narrow pass of three stadia between steep high rocks (*στεγασταῖον*) and the Mediterranean, was closed at each end by strong gates, impregnable to the land, (*ἀσπίδιον ἢ πύλην*), accessible by sea; (Amelaie, l. i. p. 33, 34, with Hutchinson's Geographical Dissertation, p. 40). The gates were thirty-five parasangs, or leagues, from Tarsus. (Amelaie, l. i. p. 33, 34), and eight or ten from Antioch. (compare Hicetius, Wesseling: p. 260, 281; Schollers, *Index Geograph. ad calurn VII. Saladin*, p. 9; Voyage en Turquie et en Perse, par M. Olier, tom. i. p. 78, 79).

<sup>2</sup> Heraclius might write to a friend in the modern words of Cæsar:—*Castra habitamus et ipse quis contra Hostem, baluamus apud Isium*. Alexander, imperator haud paulo melior quam nos fuisset ego. Ad Atticum, v. 20. Icon, a rich and flourishing city in the time of Xenophon, was ruined by the prosperity of Alexander or Simasthenes on the other side of the bay.

tary virtue. Unfolding the miraculous image of Christ, he urged them to *revenge* the holy altars which had been profaned by the worshippers of fire; addressing them by the endearing appellations of sons and brethren, he deplored the public and private wrongs of the republic. The subjects of a monarch were persuaded that they fought in the cause of freedom; and a similar enthusiasm was communicated to the foreign mercenaries, who must have viewed with equal indifference the interest of Rome and of Persia. Heraclius himself, with the skill and patience of a centurion, inculcated the lessons of the school of tactics, and the soldiers were assiduously trained in the use of their weapons, and the exercises and evolutions of the field. The cavalry and infantry in light or heavy armour were divided into two parties; the trumpets were fixed in the centre, and their signals directed the march, the charge, the retreat, or pursuit; the direct or oblique order, the deep or extended phalanx: to represent in fictitious combat the operations of genuine war. Whatever hardship the emperor imposed on the troops, he inflicted with equal severity on himself; their labour, their diet, their sleep, were measured by the inflexible rules of discipline; and, without despising the enemy, they were taught to repose an implicit confidence in their own valour and the wisdom of their leader. Cilicia was soon encompassed with the Persian arms; but their cavalry hesitated to enter the defiles of mount Taurus, till they were circumvented by the evolutions of Heraclius, who insensibly gained their

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rear, whilst he appeared to present his front in order of battle. By a false motion, which seemed to threaten Armenia, he drew them against their wishes, to a general action. They were tempted by the artful disorder of his camp; but when they advanced to combat, the ground, the sun, and the expectation of both armies, were unpropitious to the barbarians; the Romans successfully repeated their tactics in a field of battle,<sup>a</sup> and the event of the day declared to the world, that the Persians were not invincible, and that an hero was invested with the purple. Strong in victory and fame, Heraclius boldly ascended the heights of mount Taurus, directed his march through the plains of Cappadocia, and established his troops for the winter season in safe and plentiful quarters on the banks of the river Halys.\* His soul was superior to the vanity of entertaining Constantinople with an imperfect triumph: but the presence of the emperor was indispensably required to sooth the restless and rapacious spirit of the Avars.

His second expedition.  
A. D. 622,  
623, 625.

Since the days of Scipio and Hannibal, no bolder enterprise has been attempted than that which Heraclius achieved for the deliverance of the

<sup>a</sup> Fregius (Annal. p. 24) suspects that the Persians were deceived by the false manoeuvre of Julian. (Tact. c. 46), an intricate and mistaken notion of the story. The observed, pp. 279, and the military description of George of Pacha are transmitted in the Tactics of the emperor Leo.

<sup>\*</sup> George of Pacha, an eye witness, (Annal. l. ii. 177, &c.), describes, in three volumes or cantos, the first expedition of Heraclius. The poem has been lately (1777) published at Rome; but each verse and descriptive phrase is the verse corresponding with the original paper of Pagi, O'Adellio, &c.



empire.\* He permitted the Persians to oppress for a while the provinces, and to insult with impunity the capital of the East; while the Roman emperor explored his perilous way through the Black Sea,<sup>†</sup> and the mountains of Armenia, penetrated into the heart of Persia,<sup>‡</sup> and recalled the armies of the great king to the defence of their bleeding country. With a select band of five thousand soldiers, Heraclius sailed from Constantinople to Trebizond; assembled his forces which had wintered in the Pontic regions; and from the mouth of the Phasis to the Caspian sea, encouraged his subjects and allies to march with the successor of Constantine under the faithful and victorious banner of the cross. When the legions of Lucullus and Pompey first passed the Euphrates, they blushed at their easy victory over the natives of Armenia. But the long experience of war had hardened

\* Theophrastus (p. 536) carries Heraclius victoriously (κατασπασσας) into Armenia. Nearchus, (p. 11), though he confounds the two expeditions, defines the province of Laticæ. Eusebius (Annal. tom. 8, p. 221) has given the 3000 men, with the more probable station of Trebizond.

† From Constantinople to Trebizond, with a fair wind, four or five days; from Thauris to Ezerum, four to five, twelve to ten Tauris, ten; in all thirty-two. Such is the itinerary of Tavernier, (Voyages, tom. 1, p. 12-16), who was perfectly conversant with the roads of Asia. Tournefort, who travelled with a pack, spent ten or twelve days between Trebizond and Ezerum, (Voyage du Levant, tom. 3, lettre xviii.); and Chardin (Voyages, tom. 1, p. 230-231) gives the more correct distance of fifty-three passages, each of 2000 paces, (whet paces?), between Erivan and Tauris.

‡ The expedition of Heraclius into Persia is fully illustrated by M. Caussin, Mémoires de l'Académie des Inscriptions, tom. xxviii, p. 123-173. He discovers the situation of Golestana, Thaurina, Bagdad, &c. with admirable skill and learning; but the chance of 224 he passes over in silence.

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the minds and bodies of that effeminate people: their zeal and bravery were approved in the service of a declining empire; they abhorred and feared the usurpation of the house of Sassan, and the memory of persecution envenomed their pious hatred of the enemies of Christ. The limits of Armenia, as it has been ceded to the emperor Maurice, extended as far as the Araxes, the river submitted to the indignity of a bridge;<sup>\*</sup> and Heraclius, in the footsteps of Mark Antony, advanced towards the city of Tauris or Gandzaca,<sup>†</sup> the ancient and modern capital of one of the provinces of Media. At the head of forty thousand men, Chosroes himself had returned from some distant expedition to oppose the progress of the Roman arms; but he retreated on the approach of Heraclius, declining the generous alternative of peace or battle. Instead of half a million of inhabitants, which have been ascribed to Tauris under the reign of the Sophys, the city contained no more than three thousand houses; but the value of the royal treasures was enhanced by a tradition, that they were

\* *Et pontem indignatus Araxes.* — Virgil, *Æneid*, viii. 728.

The river Araxes is noisy, rapid, vehement, and, with the melting of the snows, irreducible: the strongest and most massy bridges are swept away by its current; and its indignation is attested by the ruin of many arches near the old town of Zutha. *Voyages de Chardin*, tom. i. p. 232.

† Chardin, tom. i. p. 232-238. With the *Orientale*, 16<sup>e</sup> Harleian, Bibloth. Orient. p. 824, he ascribes the foundation of Tauris, or Tachis, to Zohade, the wife of the famous Khahf Haroun Alrakhid; but it appears to have been more ancient; and the names of Gandzaca, Gazaca, Gata, are expressive of the royal treasure. The number of 400,000 inhabitants is reduced by Chardin from 1,100,000, the popular estimate.

the spoils of Cressus, which had been transported by Cyrus from the citadel of Sardes. The rapid conquests of Heraclius were suspended only by the winter-season; a motive of prudence, or superstition,<sup>1</sup> determined his retreat into the province of Alburnia, along the shores of the Caspian; and his tents were most probably pitched in the plains of Mogan,<sup>2</sup> the favourite encampment of oriental princes. In the course of this successful inroad, he signalized the zeal and revenge of a Christian emperor: at his command, the soldiers extinguished the fire, and destroyed the temples, of the Magi: the statues of Choroës, who aspired to divine honours, were abandoned to the flames; and the ruins of Thebarima or Ormia,<sup>3</sup> which had given birth to Zoroaster himself, made some atonement for the injuries of the holy sepulchre. A purer spirit of religion was shewn in the relief and deliverance of fifty thousand captives. Heraclius was rewarded by their tears and grateful

<sup>1</sup> He opened the gospel, and applied or interpreted the first canonical passage to the nature and situation of Alburnia. Theophanes, p. 228.

<sup>2</sup> The marsh of Mogan, between the Cyra and the Araxes, is sixty parangs in length and twenty in breadth. (Hécaton, p. 1023, 1024), abounding in water and fruitful pastures. (Hist. de Nader Shah, translated by Mr. Jones from a Persian MS., part II, p. 2, 3). See the encampments of Timur, (Hist. par Sherifeddin Ali, l. vi, c. 37), and the coronation of Nader Shah; (Hist. Persanne, p. 312, and the English Life by Mr. Jones, p. 64, 65).

<sup>3</sup> Thebarima and Ormia, near the lake Sparte, are proved to be the same city by d'Anville, (Mémoires de l'Académie, tom. xxiii, p. 466, 467). It is honoured as the birth-place of Zoroaster, according to the Persians, (Schultens, Index Geograph. p. 10); and this tradition is repeated by M. Perron d'Antriquil, (Mém. de l'Académie des Inscriptions, tom. lxxxi, p. 212), with some traits from the Zendavesta.

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acclamations; but this wise measure, which spread the fame of his benevolence, diffused the murmurs of the Persians against the pride and obstinacy of their own sovereign.

Amidst the glories of the succeeding campaign, Heraclius is almost lost to our eyes, and to those of the Byzantine historians.\* From the spacious and fruitful plains of Albania, the emperor appears to follow the chain of Hyrcanian mountains, to descend into the province of Media or Irak, and to carry his victorious arms as far as the royal cities of Casbin and Ispahan, which had never been approached by a Roman conqueror. Alarmed by the danger of his kingdom, the powers of Chosroes were already recalled from the Nile and the Bosphorus, and three formidable armies surrounded, in a distant and hostile land, the camp of the emperor. The Colchian allies prepared to desert his standard; and the fears of the bravest veterans were expressed, rather than concealed, by their desponding silence. "Be not terrified," said the intrepid Heraclius, "by the multitude of your foes. With the aid of Heaven, one Roman may triumph over a thousand barbarians. But if we devote our lives for the salvation of our brethren, we shall obtain the crown of martyrdom, and our immortal reward will be liberally

\* I cannot find, and believe it much more M. d'Anville does not attempt to seek, the Salmas, Tauranum, territory of the Huns, as mentioned by Theophrastus, (p. 260-267), Eutychius, (Annal. tom. ii. p. 233, 234), an insufficient author, versus Arpachon; and Casbin is most probably the city of Sapor. Ispahan is twenty-four days journey from Tauris, and Casbin half-way between them, (Voyages de Tamerlan, tom. i. p. 63-67).

"paid by God and posterity." These magnanimous sentiments were supported by the vigour of his actions. He repelled the threefold attack of the Persians, improved the divisions of their chiefs, and by a well-concerted train of marches, retreats, and successful actions, finally chased them from the field into the fortified cities of Media and Assyria. In the severity of the winter season, Saharaza deemed himself secure in the walls of Salban; he was surprised by the activity of Heraclius, who divided his troops and performed a laborious march in the silence of the night. The flat roofs of the houses were defended with useless valour against the darts and torches of the Romans: the satraps and nobles of Persia, with their wives and children, and the flower of their martial youth, were either slain or made prisoners. The general escaped by a precipitate flight, but his golden armour was the prize of the conqueror; and the soldiers of Heraclius enjoyed the wealth and repose which they had so nobly deserved. On the return of spring, the emperor traversed in seven days the mountains of Cundistan, and passed without resistance the rapid stream of the Tigris. Oppressed by the weight of their spoils and captives, the Roman army halted under the walls of Amida; and Heraclius informed the senate of Constantinople of his safety and success, which they had already felt by the retreat of the besiegers. The bridges of the Euphrates were destroyed by the Persians; but as soon as the emperor had discovered a ford, they hastily retired to defend the banks of the Sa-



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Deliverance of  
Constantinople  
from the  
Persians  
and Avars.  
A. D. 626.

cus,\* in Cilicia. That river, an impetuous torrent, was about three hundred feet broad, the bridge was fortified with strong turrets, and the banks were lined with barbarian archers. After a bloody conflict, which continued till the evening, the Romans prevailed in the assault, and a Persian of gigantic size was slain and thrown into the Sarus by the hand of the emperor himself. The enemies were dispersed and dismayed; Heraclius pursued his march to Sebaste in Cappadocia; and at the expiration of three years, the same coast of the Euxine applauded his return from a long and victorious expedition.\*

Instead of skirmishing on the frontier, the two monarchs who disputed the empire of the East aimed their desperate strokes at the heart of their rival. The military force of Persia was wasted by the marches and combats of twenty years, and many of the veterans, who had survived the perils of the sword and the climate, were still detained in the fortresses of Egypt and Syria. But the revenge and ambition of Chosroes exhausted his kingdom; and the new levies of subjects, strangers, and slaves, were divided into three formidable bodies.\* The first army of fifty thousand

\* At ten passages from Taurus, the army of the younger Cyrus passed the Sarus, three of them in breadth of the Pyramus, a stream of breadth, say six passages farther to the east, (Xenophon, *Anab.* i. 4, p. 33, 34.)

\* George of Pisidia (*Rec. Mazarin.* 246-267, p. 49) celebrates with truth the persevering courage of the three campaigns (*três expéditions*) against the Persians.

\* Petavius (*Annotationes ad Narsisum*, p. 61, 62, 65) distinguishes the names and actions of six Persian generals who were successively sent against Heraclius.

men, illustrious by the ornament and title of the *golden spears*, was destined to march against Heraclius: the second was stationed to prevent his junction with the troops of his brother Theodorus; and the third was commanded to besiege Constantinople, and to second the operations of the chagan, with whom the Persian king had ratified a treaty of alliance and partition. Sarbar, the general of the third army, penetrated through the provinces of Asia to the well-known camp of Chalcedon, and amused himself with the destruction of the sacred and profane buildings of the Asiatic suburbs, while he impatiently waited the arrival of his Scythian friends on the opposite side of the Bosphorus. On the twenty-ninth of June, thirty thousand barbarians, the vanguard of the Avars, forced the long wall, and drove into the capital a promiscuous crowd of peasants, citizens, and soldiers. Fourscore thousand\* of his native subjects, and of the vassal tribes of Gepidae, Russians, Bulgarians, and Slavonians, advanced under the standard of the chagan: a month was spent in marches and negotiations; but the whole city was invested on the thirty-first of July, from the suburbs of Pera and Galata to the Blachernæ and seven towers; and the inhabitants desisted with terror the flaming signals of the European and Asiatic shores. In the

\* This number of eight myriads is specified by George of Padda, (Bell. Alex. 219). The poet (53-58) clearly indicates that the old chagan lived till the reign of Heraclius, and that his son and successor was born at a German nation. Yet Poggini (Annali, p. 55) has given another interpretation to this passage.

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meanwhile the magistrates of Constantinople repeatedly strove to purchase the retreat of the chagan: but their deputies were rejected and insulted; and he suffered the patricians to stand before his throne, while the Persian envoys, in silk robes, were seated by his side.—“ You see,” said the haughty barbarian, “ the proofs of my  
“ perfect union with the great king: and his  
“ lieutenant is ready to send into my camp a select band of three thousand warriors. Presume  
“ no longer to tempt your master with a partial  
“ and inadequate ransom: your wealth and your  
“ city are the only presents worthy of my acceptance. For yourselves, I shall permit you to depart, each with an under-garment and a shirt; and, at my entreaty, my friend Sarbar will not  
“ refuse a passage through his lines. Your absent prince, even now a captive or a fugitive,  
“ has left Constantinople to its fate: nor can you  
“ escape the arms of the Avars and Persians, unless you could soar into air like birds, unless like  
“ fishes you could dive into the waves.”<sup>a</sup> During ten successive days, the capital was assaulted by the Avars, who had made some progress in the science of attack: they advanced to sap or batter the wall, under the cover of the impenetrable tortoise: their engines discharged a perpetual

<sup>a</sup> A bull, a dog, a mouse, and five arrows, had been the present of the Sogdian king to Darius, (Herodotus, l. iv, c. 121, 122). Salomonius, in a letter I see signed only Rouman, with much good taste, joins the few participants *maius esse effrayere*: *ex ne feci quod me infamissimum dicit Darius n'out fait que dire*. (Biblio. tom. iii, p. 186). Yet I much question whether the senate and people of Constantinople *traged* at this message of the chagan.

colley of stones and darts; and twelve lofty towers of wood exalted the combatants to the height of the neighbouring ramparts. But the senate and people were animated by the spirit of Heraclius, who had detached to their relief a body of twelve thousand cuirassers; the powers of fire and mechanics were used with superior art and success in the defence of Constantinople; and the galleys, with two and three ranks of oars, commanded the Bosphorus, and rendered the Persians the idle spectators of the defeat of their allies. The Avars were repulsed; a fleet of Slavonian canoes was destroyed in the harbour; the vassals of the chagan threatened to desert, his provisions were exhausted, and after burning his engines, he gave the signal of a slow and formidable retreat. The devotion of the Romans ascribed this signal deliverance to the virgin Mary; but the mother of Christ would surely have condemned their inhuman murder of the Persian envoys, who were entitled to the rights of humanity, if they were not protected by the laws of nations.\*

After the division of his army, Heraclius prudently retired to the banks of the Phasis, from whence he maintained a defensive war against the fifty thousand gold spears of Persia. His anxiety was relieved by the deliverance of Constantinople; his hopes were confirmed by a victory of his brother Theodorus; and to the hostile league of

ALLIANCES  
and con-  
quests of  
Heraclius.

\* The *Prochot Chronicle* (pp. 352-357) gives a minute and authentic narrative of the siege and deliverance of Constantinople. Theodoret (p. 554) adds some circumstances; and a faint light may be obtained from the smokes of George of Pisidia, who has composed a poem (du *Belle Alliance*, p. 42-54) to commemorate this auspicious event.

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Chosroes with the Avars, the Roman emperor opposed the useful and honourable alliance of the Turks. At his liberal invitation, the lord of Chozars<sup>f</sup> transported their tents from the plains of the Volga to the mountains of Georgia; Heraclius received them in the neighbourhood of Teflis, and the khan with his nobles dismounted from their horses, if we may credit the Greeks, and fell prostrate on the ground, to adore the purple of the Cæsar. Such voluntary homage and important aid were entitled to the warmest acknowledgments; and the emperor, taking off his own dindem, placed it on the head of the Turkish prince, whom he saluted with a tender embrace and the appellation of son. After a sumptuous banquet, he presented Ziebel with the plate and ornaments, the gold, the gems, and the silk, which had been used at the imperial table, and, with his own hand, distributed rich jewels and ear-rings to his new allies. In a secret interview, he produced the portrait of his daughter Eudocia,<sup>g</sup> condescended to flatter the barbarian with the promise of a fair and august bride, obtained an immediate succour of

<sup>f</sup> The power of the Chozars prevailed in the sixth, seventh, and eighth centuries. They were known to the Greeks, the Arabs, and, under the name of *Koss*, to the Chinese themselves. De Guignes, *Hist. des Huns*, tom. II. part II. p. 307-380.

<sup>g</sup> Euphrosina, or Eudocia, the only daughter of Heraclius and his first wife Eudokia, was born at Constantinople on the 7th of July, A. D. 611, baptised the 15th of August, and crowned in the church of St. Stephen in the palace the 4th of October of the same year. At this time she was about fifteen. Eudocia was afterwards sent to her Turkish husband, but the news of his death stopped her journey and prevented the consummation. (Durango, *Familia Byzantina*, p. 118.)



forty thousand horse, and negotiated a strong diversion of the Turkish arms on the side of the Oxus.\* The Persians, in their turn, retreated with precipitation; in the camp of Edessa, Heraclius reviewed an army of seventy thousand Romans and strangers; and some months were successfully employed in the recovery of the cities of Syria, Mesopotamia, and Armenia, whose fortifications had been imperfectly restored. Sarbar still maintained the important station of Chalcodon; but the jealousy of Chosroes, or the artifice of Heraclius, soon alienated the mind of that powerful satrap from the service of his king and country. A messenger was intercepted with a real or fictitious mandate to the *endarigan*, or second in command, directing him to send, without delay, to the throne, the head of a guilty or unfortunate general. The despatches were transmitted to Sarbar himself; and as soon as he read the sentence of his own death, he dexterously inserted the names of four hundred officers, assembled a military council, and asked the *endarigan*, whether he was prepared to execute the commands of their tyrant? The Persians unanimously declared, that Chosroes had forfeited the sceptre: a separate treaty was concluded with the government of Constantinople; and if some considerations of honour or policy restrained Sarbar from joining the standard of Heraclius, the em-

\* Eusebius (Hist. Eccles. p. 13-14) gives some curious and useful details but his numbers are rather too high—200,000 Romans assembled at Edessa—200,000 Persians listed at Emesa. The absorption of a Syrian is so very easy, that it is not to be wondered at.

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XLVI.His third  
expedition,  
A. D. 621,

peror was assured, that he might prosecute, without interruption, his designs of victory and peace.

Deprived of his firmest support, and doubtful of the fidelity of his subjects, the greatness of Chosroes was still conspicuous in its ruins. The number of five hundred thousand may be interpreted as an oriental metaphor, to describe the men and arms, the horses and elephants, that covered Media and Assyria against the invasion of Heraclius. Yet the Romans boldly advanced from the Araxes to the Tigris, and the timid prudence of Rhazates was content to follow them by forced marches through a desolate country, till he received a peremptory mandate to risk the fate of Persia in a decisive battle. Eastward of the Tigris, at the end of the bridge of Mosul, the great Nimveh had formerly been erected: the city, and even the ruins of the city, had long since disappeared: the vacant space afforded a spacious field for the operations of the two armies. But these operations are neglected by the Byzantine historians, and, like the authors of epic poetry and romance, they ascribe the victory,

<sup>1</sup> *Ctesias* (apud *Diodor. Sicul. lib. i. l. li. p. 118*, edit. Weinsing) assigns 480 stadia (perhaps only 32 miles) for the circumference of Nimveh. *Josephus* talks of three days journey; the 120,000 persons described by the prophet as incapable of discerning their right hand from their left, may afford about 100,000 persons of all ages for the inhabitants of that ancient capital. (*Gegart, Origines des Langues Asiatiques*, tom. iii. part 1. p. 92. 93) which ceased to exist 600 years before Christ. The western suburb still subsisted, and is mentioned under the name of Mosul in the first age of the Arabian khalfis.

<sup>2</sup> *Nabatie* (*Voyage en Arabie*, &c. tom. ii. p. 286) passed over Nimveh without perceiving it. He mistook for a ridge of hills the old rampart of brick or earth. It is said to have been 100 feet high, flanked with 1300 towers, each of the height of 200 feet.

not to the military conduct, but to the personal valour, of their favourite hero. On this memorable day, Heraclius, on his horse Phallus, surpassed the bravest of his warriors: his hip was pierced with a spear, the steed was wounded in the thigh, but he carried his master safe and victorious through the triple phalanx of the barbarians. In the heat of the action, three valiant chiefs were successively slain by the sword and lance of the emperor; among these was Rhazates himself; he fell like a soldier, but the sight of his head scattered grief and despair through the fainting ranks of the Persians. His armour of pure and massy gold, the shield of one hundred and twenty plates, the sword and belt, the saddle and cuirass, adorned the triumph of Heraclius, and if he had not been faithful to Christ and his mother, the champion of Rome might have offered the fourth *opime* spoils to the Jupiter of the Capitol.<sup>2</sup> In the battle of Nineveh, which was fiercely fought from day-break to the eleventh hour, twenty-eight standards, beside those which might be broken or torn, were taken from the Persians; the greatest part of their army was cut in pieces, and the victors, concealing their own loss, passed the night on the field. They acknowledged, that on this occasion it was less difficult to kill than to discomfit the soldiers of Chosroes:

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and vic-  
tory, De-  
cember 1;  
&c.

<sup>1</sup> Rex regia arma fecit rex Rhazates, in the best translation: *hinc postea* (quintus Livy, l. 10) *inter sic bella, opima prima sunt spolia, alio rursus ejus fortuna decem.* If Varro (*apud Pompon. Festum*, p. 306, edit. Dacier) could justify his illentry in granting the *opima* spoils even to a common soldier who had slain the king or general of the enemy, the honour would have been much more cheap and common.

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amidst the bodies of their friends, no more than two bow-shot from the enemy, the remnant of the Persian cavalry stood firm till the seventh hour of the night: about the eighth hour they retired to their unrifled camp, collected their baggage, and dispersed on all sides, from the want of orders rather than of resolution. The diligence of Heraclius was not less admirable in the use of victory: by a march of forty-eight miles in four and twenty hours, his vanguard occupied the bridges of the greater and the lesser Zab; and the cities and palaces of Assyria were open for the first time to the Romans. By a just gradation of magnificent scenes, they penetrated to the royal seat of Dastagerd, and though much of the treasure had been removed, and much had been expended, the remaining wealth appears to have exceeded their hopes, and even to have satiated their avarice. Whatever could not be easily transported, they consumed with fire, that Chosroes might feel the anguish of those wounds, which he had so often inflicted on the provinces of the empire: and justice might allow the excuse, if the desolation had been confined to the works of regal luxury, if national hatred, military license, and religious zeal, had not wasted with equal rage the habitations and the temples of the guiltless subject. The recovery of three hundred Roman standards, and the deliverance of the numerous captives of Edessa and Alexandria, reflect a purer glory on the arms of Heraclius. From the palace of Dastagerd, he pursued his march within a few miles of Modain or Ctesiphon, till he was stopped, on the banks of the Arba,

by the difficulty of the passage, the rigour of the season, and perhaps the fame of an impregnable capital. The return of the emperor is marked by the modern name of the city of Sherhzoar; he fortunately passed mount Zara, before the snow, which fell incessantly thirty-four days, and the citizens of Gandzaca, or Tauris, were compelled to entertain his soldiers and their horses with an hospitable reception.\*

When the ambition of Chosroes was reduced to the defence of his hereditary kingdom, the love of glory, or even the sense of shame, should have urged him to meet his rival in the field. In the battle of Ninereh, his courage might have taught the Persians to vanquish, or he might have fallen with honour by the lance of a Roman emperor. The successor of Cyrus chose rather, at a secure distance, to expect the event, to assemble the relics of the defeat, and to retire by measured steps before the march of Heraclius, till he beheld with a sigh the once loved mansions of Dastagerd. Both his friends and enemies were persuaded, that it was the intention of Chosroes to bury himself under the ruins of the city and palace: and as both might have been equally adverse to his flight, the monarch of Asia, with Sirin, and three concubines, escaped through an hole in the wall nine days before the arrival of the Romans. The slow and

Flight of  
Chosroes,  
A. D. 627.  
Dec. 29.

\* In describing this last expedition of Heraclius, the facts, the plans, and the dates of Theophanes, (p. 265-271), are so accurate and sufficient that he must have followed the original letters of the emperor, of which the Paschal Chronicle has preserved (p. 208-209) a very curious specimen.





Persian had not yet sunk to the level of his fortune; he derived a momentary confidence from the retreat of the emperor: he wept with impotent rage over the ruins of his Assyrian palaces; and disregarded too long the rising murmurs of the nation, who complained that their lives and fortunes were sacrificed to the obstinacy of an old man. That unhappy old man was himself tortured with the sharpest pains both of mind and body: and, in the consciousness of his approaching end, he resolved to fix the tiara on the head of Merdara, the most favoured of his sons. But the will of Chosroes was no longer revered, and Siroes, who gloried in the rank and merit of his mother Sira, had conspired with the malecontents to assert and anticipate the rights of primogeniture.\* Twenty-two satraps, they styled themselves patriots, were tempted by the wealth and honours of a new reign: to the soldiers, the heir of Chosroes promised an increase of pay: to the Christians, the free exercise of their religion: to the captives, liberty and rewards; and to the nation, instant peace and the reduction of taxes. It was determined by the conspirators that Siroes, with the ensigns of royalty, should appear in the camp: and if the enterprise should fail, his escape was contrived to the imperial court. But the new monarch was saluted with unanimous acclamations: the flight of Chosroes (yet where could he have fled?) was rudely arrested, eighteen sons were massacred before his face,

He is de-  
posed.  
A. D. 628,  
Feb. 24.

\* The authentic narrative of the fall of Chosroes is contained in the letters of Hormisdas (Chron. Paschal. p. 589) and the history of Theophanes, pp. 573.

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and mur-  
dered by  
his son  
Siroes,  
Feb. 28.

and he was thrown into a dungeon, where he expired on the fifth day. The Greeks and modern Persians infinitely describe how Chosroes was insulted, and famished, and tortured, by the command of an inhuman son, who so far surpassed the example of his father: but at the time of his death, what tongue would relate the story of the parricide? what eye could penetrate into the *lower of darkness*? According to the faith and mercy of his Christian enemies, he sunk without hope into a still deeper abyss; and it will not be denied, that tyrants of every age and sect are the best entitled to such infernal abodes. The glory of the house of Sassan ended with the life of Chosroes: his unnatural son enjoyed only eight months the fruit of his crimes; and in the space of four years the regal title was assumed by nine candidates, who disputed, with the sword or dagger, the fragments of an exhausted monarchy. Every province, and each city of Persia, was the scene of independence, of discord, and of blood, and the state of anarchy prevailed about eight years longer, till the factions were silenced and united under the common yoke of the Arabian caliphs.\*

\* On the first rumour of the death of Chosroes, an Hecastem in two cantos was instantly published at Constantinople by George of Psallia, (p. 97-103). A poet and a poet might very properly exist in the domination of the public enemy, (*locutus est exagros*, v. 38); but such a man's revenge is unworthy of a king and a conqueror; and I am sorry to find so much black expostition (*ἰσχυρὸν τὸ λαλοῦναι*), even an *exagros* *ἡμῶν* is no exception; . . . *ἡ τὴν τὴν μεταβολὴν*, &c.) in the letter of Hecastem he almost applauds the parricide of Siroes as an act of duty and justice.

\* The best official accounts of this last period of the Sassanid reign are found in Eutychius, (*Annal.* tom. ii, p. 231-236), who classifies

As soon as the mountains became passable, the emperor received the welcome news of the success of the conspiracy, the death of Chosroes, and the elevation of his eldest son to the throne of Persia. The authors of the revolution, eager to display their merits in the court or camp of Tauris, preceded the ambassadors of Siroes, who delivered the letters of their master to his brother the emperor of the Romans.\* In the language of the usurpers of every age, he imputes his own crimes to the Deity, and, without degrading his equal majesty, he offers to reconcile the long discord of the two nations, by a treaty of peace and alliance more durable than brass or iron. The conditions of the treaty were easily defined and faithfully executed. In the recovery of the standards and prisoners which had fallen into the hands of the Persians, the emperor imitated the example of Augustus: their cure of the national dignity was celebrated by the poets of the times, but the decay of genius may be measured by the distance between Horace and George of Pisidia; the subjects and brethren of Heraclius were redeemed from persecution, slavery, and exile; but instead of the Roman eagles, the true wood of the holy cross was restored to the importunate demands of the successor of Constantine. The victor was not ambitious of enlarg-

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Treaty of peace between the two empires, A. D. 628, March. &c.

\* Illustrates the parolide of Siroes; d'Herbelot, *Bibliothèque Orientale*, p. 786, and Assmann, *Bibliotheca Orientalis*, tom. III, p. 414-146.

\* The letter of Siroes in the Pseudo-Chronicle (p. 403) unfortunately ends before he proceeds to business. The treaty appears in its execution in the histories of Theophanes and Nicephorus.

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ing the weakness of the empire; the son of Chosroes abandoned without regret the conquests of his father: the Persians who evacuated the cities of Syria and Egypt were honourably conducted to the frontier, and a war which had wounded the vitals of the two monarchies, produced no change in their external and relative situation. The return of Heraclius from Tauris to Constantinople, was a perpetual triumph; and after the exploits of six glorious campaigns, he peaceably enjoyed the sabbath of his toils. After a long impatience, the senate, the clergy, and the people, went forth to meet their hero, with tears and acclamations, with olive branches and innumerable lamps: he entered the capital in a chariot drawn by four elephants; and as soon as the emperor could disengage himself from the tumult of public joy, he tasted more genuine satisfaction in the embraces of his mother and his son.\*

The succeeding year was illustrated by a triumph of a very different kind, the restitution of the true cross to the holy sepulchre. Heraclius performed in person the pilgrimage of Jerusalem, the identity of the relic was verified by the discreet patriarch,<sup>†</sup> and this august ceremony has been com-

\* The burden of Cornelle's verse.

† "Maurice Heraclius, as our people and I attend,"

is thus justly eulged in the present oration. See his triumph in Theophanes (p. 213; 213) and Nicephorus, (p. 15, 16). The life of the mother and tenderness of the son are attested by George of Pisidia, (Bell. Alex. 255, &c. p. 40). The metaphor of the Sabbath is used, somewhat profanely, by these Byzantine Christians.

† See Baronius, (Annal. Eccles. A. D. 628, N. 3-8); Eusebius, (Annal. tom. ii, p. 240-248); Nicephorus, (Ibid. p. 15). The seals



memorated by the annual festival of the exaltation of the cross. Before the emperor presumed to tread the consecrated ground, he was instructed to strip himself of the diadem and purple, the pomp and vanity of the world: but in the judgment of his clergy, the persecution of the Jews was more easily reconciled with the precepts of the gospel. He again ascended his throne to receive the congratulations of the ambassadors of France and India: and the fame of Moses, Alexander, and Hercules,\* was eclipsed, in the popular estimation, by the superior merit and glory of the great Heraclius. Yet the deliverer of the East was indigent and feeble. Of the Persian spoils, the most valuable portion had been expended in the war, distributed to the soldiers, or buried, by an unlucky tempest, in the waves of the Euxine. The conscience of the emperor was oppressed by the obligation of restoring the wealth of the clergy, which he had borrowed for their own defence: a perpetual fund was required to satisfy these inexorable creditors; the provinces, already wasted by the arms and avarice of the Persians, were compelled to a second payment of the same taxes; and the arrears of a simple citizen, the treasurer of Damascus, were commuted to a fine of one hundred thousand pieces of gold. The loss of two hundred thousand

\* The emperor never had broken and his predecessors of the cross is mentioned under Constantine the Great in the history of the Emperor.

\* George of Pisidia, *Argem. III.* de *Expositio. contra Paganos*, 411, &c. and *Heraclius*, *Argem. I.* 62-126. I neglect the names of the other provinces of the East, Timothy, &c. Chaucer and the shagun were of course mentioned in *Beharzar*, *Timur*, the old emperor, &c.

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soldiers\* who had fallen by the sword, was of less fatal importance than the decay of arts, agriculture, and population, in this long and destructive war: and although a victorious army had been formed under the standard of Heraclius, the unnatural effort appears to have exhausted rather than exercised their strength. While the emperor triumphed at Constantinople or Jerusalem, an obscure town on the confines of Syria was pillaged by the Saracens, and they cut in pieces some troops who advanced to its relief: an ordinary and trifling occurrence, had it not been the prelude of a mighty revolution. These robbers were the apostles of Mahomet: their fanatic valour had emerged from the desert: and in the last eight years of his reign, Heraclius lost to the Arabs the same provinces which he had rescued from the Persians.

\* Suidas (in Excerpt. Hist. Byzant. p. 46) gives this number; but either the *Persians* must be read for the *Jacobites* war, or this passage does not belong to the emperor Heraclius.

## CHAP. XLVII.

*Theological history of the doctrine of the incarnation—  
 The human and divine nature of Christ—Unity of  
 the patriarchs of Alexandria and Constantinople—St.  
 Cyril and Nestorius—Third general council of Ephesus  
 —Heresy of Eutyches—Fourth general council of Chal-  
 cedon—Civil and ecclesiastical discord—Intolerance of  
 Justinian—The three chapters—the Monothelite contro-  
 versy—State of the oriental sects—I. The Nestorians  
 —II. The Jacobites—III. The Maronites—IV. The  
 Armenians—V. The Copts and Abyssinians.*

AFTER the extinction of paganism, the Christ-  
 ians in peace and piety might have enjoyed their  
 solitary triumph. But the principle of discord  
 was alive in their bosom, and they were more  
 solicitous to explore the nature, than to practise  
 the laws, of their founder. I have already ob-  
 served, that the disputes of the TRINITY were  
 succeeded by those of the INCARNATION; alike  
 scandalous to the church, alike pernicious to the  
 state, still more minute in their origin, still more  
 durable in their effects. It is my design to com-  
 prise in the present chapter, a religious war of two  
 hundred and fifty years, to represent the ecclesias-

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The Incarn-  
 ation of  
 Christ.

tical and political schism of the oriental sects, and to introduce their clamours or sanguinary contests, by a modest inquiry into the doctrines of the primitive church.\*

\* By what means shall I authenticate this previous inquiry, which I have studied to entrench on and compress? If I present in supporting such facts or reflections by its proper and special evidence, every title would demand a series of treatises, and every note would swell to a critical dissertation. But the familiarities passages of antiquity which I have seen with my own eyes, are attested, digested, and illustrated, by *Peterson* and *Le Clerc*, by *Baronius* and *Moestlin*. I shall be content to fortify my narrative by the names and characters of these respectable guides; and in the contemplation of a minute and remote object, I am not ashamed to borrow the aid of the strongest glasses.—1. The *Augusta Theologia* of *Peterson*, is a work of incredible labour and compass: the volumes which relate solely to the instruction, (two folios, sixth and sixth, of 801 pages), are divided into six books—the first of history, the remainder of controversy and doctrine. The *learned* learning is copious and correct; his Latin is pure, his method clear, his argument profound and well connected; but he is the slave of the fathers, the source of heresy, and the enemy of truth and reason, as often as they are opposed to the catholic faith. 2. The *Armenius Le Clerc*, who has composed in a quarto volume, (Amsterdam 1716), the ecclesiastical history of the two first centuries, was free both in his temper and situation; his sense is clear, but his thoughts are narrow; he reflects the reason is fully of age to the standard of his private judgment; and his propriety is sometimes quickened, and sometimes tainted, by his opposition to the fathers. See the heretics, (Cerinthians, lxxx; Ebionites, xlii; Carpocratians, lxxv; Valentines, cxi); Arianism, cxviii; Marcionites, cxvi, &c.), under their proper dates. 3. The *Histoire Critique du Manichéisme* (Amsterdam, 1754, 1759, in two vols. in 4to, with a posthumous dissertation sur les Nazarenes, Leningue, 1745) of M. de Beausobre, is a treasury of ancient philosophy and theology. The learned historian spins with incomparable art the systematic thread of opinions, and transforms himself by turns into the person of a saint, a sage, or an heretic. Yet his refinement is sometimes excessive; he betrays an anxious partiality in favour of the weaker side, and, while he guards against extremes, he does not allow sufficient scope for superstition and fanaticism. A copious table of contents will direct the reader to any point that he wishes to view more fully.—4. I am persuaded that *Peterson* has independent title, *Le*

1. A laudable regard for the honour of the first proselytes, has countenanced the belief, the hope, the wish, that the Ebionites, or at least the Nazarenes, were distinguished only by their obstinate perseverance in the practice of the *Mosaic rites*. Their churches have disappeared, their books are obliterated: their obscure freedom might allow a latitude of faith, and the softness of their infant creed would be variously moulded by the zeal or prudence of three hundred years. Yet the most charitable criticism must refuse these sectaries any knowledge of the pure and proper divinity of Christ. Educated in the school of Jewish prophecy and prejudice, they had never been taught to elevate their hopes above an human and temporal Messiah.<sup>5</sup> If they had courage to hail their king when he appeared in a plebeian garb, their grosser apprehensions were incapable of discerning their God, who had studiously disguised his celestial character under the name and person of a mortal.<sup>6</sup> The familiar

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1. A pure  
name in the  
Sikhism.

Clear, less rigorous than Rusemper, the historian Madheim is full, rational, reflect, and modern. In his learned work, *Die Reichen Erbschaften aus Constantinum* (Helmstedt, 1788; in *den*, see the *Neueren und Elendigen*, p. 172-179, 378-382; the *Geschichte* is proved, p. 179, &c.; *Christen*, p. 180-201; *Reichthum*, p. 312-321; *Caracteres*, p. 322-331; *Vollkommen*, p. 371-389; *Martin*, p. 404, 410; the *Martinianer*, p. 820-827, &c.

A few years since John W. Xpian, *editor of the Boston Commonwealth*, writes, says the Jewish Targum, *Matth. Dialog.* p. 207, in the name of his countrymen, and the modern Jews, the few who dissent their thoughts from science to religion, still hold the same language, and wage the literal sense of the prophets.

\* Chrysostom (Harrington), *Hom. de Inhab.*, tom. v, c. 3, p. 187; and Athanasius (Peters, Dogmat., Theolog., tom. v, l. i, c. 7, § 2) are obliged to confess that the divinity of Christ is rarely mentioned by himself or his disciples.



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companions of Jesus of Nazareth conversed with their friend and countryman, who, in all the actions of rational and animal life, appeared of the same species with themselves. His progress from infancy to youth and manhood, was marked by a regular increase in stature and wisdom; and after a painful agony of mind and body, he expired on the cross. He lived and died for the service of mankind; but the life and death of Socrates had likewise been devoted to the cause of religion and justice; and although the stoic or the hero may disdain the humble virtues of Jesus, the tears which he shed over his friend and country, may be esteemed the purest evidence of his humanity. The miracles of the gospel could not astonish a people who held, with intrepid faith, the more splendid prodigies of the Mosiac law. The prophets of ancient days had cured diseases, raised the dead, divided the sea, stopped the sun, and ascended to heaven in a fiery chariot. And the metaphorical style of the Hebrews might ascribe to a saint and martyr, the adoptive title of Son of God.

His birth  
and elevation

Yet in the insufficient creed of the Nazarenes and the Ebionites, a distinction is faintly noticed between the heretics, who confounded the generation of Christ in the common order of nature, and the less guilty schismatics, who revered the virginity of his mother, and excluded the aid of an earthly father. The incredulity of the former was countenanced by the visible circumstances of his birth, the legal marriage of his reputed pa-

rents, Joseph and Mary, and his lineal claim to the kingdom of David and the inheritance of Judah. But the secret and authentic history has been recorded in several copies of the gospel according to St. Matthew,\* which these sectaries long preserved in the original Hebrew,† as the sole evidence of their faith. The natural suspicions of the husband, conscious of his own chastity, were dispelled by the assurance (in a dream) that his wife was pregnant of the Holy Ghost: and as this distant and domestic prodigy could not fall under the personal observation of the historian, he must have listened to the same voice which dictated to Isaiah the future conception of a virgin. The son of a virgin, generated by the ineffable operation of the Holy Spirit, was a creature without example or resemblance, superior in every attribute of mind and body to the children of Adam. Since the introduction of the

\* The two first chapters of St. Matthew did not exist in the Ethiopic copies. (Isophaea. Hæres. xxx. li.) and the miraculous conception is one of the last articles, which Dr. Eusebius has omitted from his summary creed.

† It is probable enough that the text of the gospel, by the use of the Jewish character, was composed in the Hebrew or Syriac idiom: the fact is attested by a chain of fathers—Papias, Irenæus, Origen, Jerom. &c. It is devoutly believed by the catholics, and admitted by Cæcilius, Gentius, and Isaac Vossius, among the protestant critics. This rich Hebrew gospel of St. Matthew is most unaccountably lost; and we may excuse the diligence or fidelity of the protestant churches, who have preferred the unauthorised version of some learned Greek. Erasmus and his followers, who respect our Greek text as the original gospel, deprive themselves of the evidence which declares it to be the work of an apostle. See Schæp, Hist. Critique, &c. tom. ii. c. 3-8, p. 47-101, and the Prolegomena of Mill and Wetstein to the New Testament.



not his own, but the sins of the world. On his return to his native skies, he received the immense reward of his obedience; the everlasting kingdom of the Messiah, which had been darkly foretold by the prophets, under the carnal images of peace, of conquest, and of dominion. Omnipotence could enlarge the human faculties of Christ to the extent of his celestial office. In the language of antiquity, the title of God has not been severely confined to the first parent, and his incomparable minister, his only begotten Son, might claim, without presumption, the religious, though secondary, worship of a subject world.

II. The seeds of the faith, which had slowly arisen in the rocky and ungrateful soil of Judea, were transplanted, in full maturity, to the happier climes of the Gentiles; and the strangers of Rome or Asia, who never beheld the manhood, were the more readily disposed to embrace the divinity, of Christ. The polytheist and the philosopher, the Greek and the barbarian, were alike accustomed to conceive a long succession, an infinite chain of angels or demons, or deities, or aeons, or emanations, issuing from the throne of light. Nor could it seem strange or incredible, that the first of these aeons, the *Logos*, or word of God, of the same substance with the Father, should descend upon earth to deliver the human race from vice and error, and to conduct them in the paths of life and immortality. But the prevailing doctrine of the eternity and inherent pravity of matter infected the primitive churches, of the East. Many among the Gentile prose-

II. A poor  
God to the  
Gentiles.

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lytes, refused to believe that a celestial spirit, an undivided portion of the first essence, had been personally united with a mass of impure and contaminated flesh: and, in their zeal for the divinity, they piously alleged the humanity of Christ. While his blood was still recent on mount Calvary,<sup>1</sup> the *Docetes*, a numerous and learned sect of Asiatics, invented the *phantastic* system, which was afterwards propagated by the Marcionites, the Manichæans; and the various names of the gnostic heresy.<sup>2</sup> They denied the truth and authenticity of the gospels, as far as they relate the conception of Mary, the birth of Christ, and the thirty years that preceded the exercise of his ministry. He first appeared on the banks of the Jordan in the form of perfect manhood: but it was a form only, and not a substance; an human figure created by the hand of Omnipotence to imitate the faculties and actions of a man, and to impose a perpetual illusion on the senses of his friends and enemies. Articulate sounds vibrated on the ears of the disciples; but the image which was impressed on their optic nerve, eluded the more stab-

<sup>1</sup> Apostoli adhibe bœulæ asperitiosas, apud Judæos Christi sanguine sacente, Paxi bœulæ duntaxat corpus inestabatur. Hieronym. ad Marc. l. c. 8. The epistle of Ignatius to the Smyrniens, and even the gospel according to St. John, are levelled against the groundless story of the Docetes, who had obtained too much credit in the world, (St. John, iv. 1-6.)

<sup>2</sup> About the year 200 of the Christian era, Irenæus and Hippolytus collected the thirty-two sects, viz. Judæans, gnostics, which had multiplied to fourscore in the time of Epiphanius (Hist. Ecclesiæ, l. vi. c. xxi, xxii). The first books of Irenæus, still exist in the library of Paris; but the original might perhaps be found in some library of Greece.



born evidence of the touch; and they enjoyed the spiritual, not the corporeal, presence of the Son of God. The rage of the Jews was illy wasted against an impassive phantom; and the myrtic scenes of the passion and death, the resurrection and ascension, of Christ, were represented on the theatre of Jerusalem for the benefit of mankind. If it were urged, that such ideal mimicry, such insensate deception, was unworthy of the God of truth, the Docetes agreed with too many of their orthodox brethren in the justification of pious falsehood. In the system of the Gnostics, the Jehovah of Israel, the creator of this lower world, was a rebellious, or at least an ignorant, spirit. The Son of God descended upon earth to abolish his temple and his law; and, for the accomplishment of this salutary end, he dexterously transferred to his own person the hope and prediction of a temporal Messiah.

One of the most subtle disputants of the Manichaean school, has pressed the danger and indecency of supposing, that the God of the Christians, in the state of an human foetus, emerged at the end of nine months from a female womb. The pious horror of his antagonists provoked them to disclaim all sensual circumstances of conception and delivery: to maintain, that the divinity passed through Mary like a sun-beam through a plate of glass, and to assert, that the seal of her virginity remained unbroken even at the moment when she became the mother of Christ. But the rashness of these concessions has encouraged a milder sentiment of those of

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His lower-  
empire  
being.

CHAP. the Doubter, who taught, not that Christ was a  
XLVII. phantom; but that he was clothed with an im-  
possible and incorruptible body. Such, indeed,  
in the more orthodox system he has acquired  
since his resurrection, and such he must always  
have possessed, if it were capable of pervading,  
without resistance or injury, the density of in-  
termediate matter. Devoid of its most essen-  
tial properties, it might be exempt from the at-  
tributes and infirmities of the flesh. A fetus  
that could increase from an invisible point to its  
full maturity; a child that could attain the sta-  
ture of perfect manhood, without deriving any  
nourishment from the ordinary sources, might  
continue to exist without repairing a daily waste  
by a daily supply of external matter. Jesus might  
sate the repasts of his disciples without being  
subject to the calls of thirst or hunger; and his  
virgin purity was never sullied by the involuntary  
stains of sensual concupiscence. Of a body thus  
singularly constituted, a question would arise, by  
what means, and of what materials, it was ori-  
ginally framed; and our sounder theology is start-  
led by an answer which was not peculiar to the  
Gnostics, that both the form and the substance  
proceeded from the divine essence. The idea of  
pure and absolute spirit is a refinement of modern  
philosophy; the incorporeal essence, ascribed by  
the ancients to human souls, celestial beings, and  
even the Deity himself, does not exclude the no-  
tion of extended space; and their imagination was  
satisfied with a subtle nature of air, or fire, or ether,  
incomparably more perfect than the grossness of

the material world. If we define the place, we must describe the figure, of the Deity. Our experience, perhaps our vanity, represents the powers of reason and virtue under an human form. The Antitropomorphites, who swarmed among the monks of Egypt and the catholics of Africa, could produce the express declaration of scripture, that man was made after the image of his creator.<sup>2</sup> The venerable Serapian, one of the saints of the Nitrian desert, relinquished, with many a tear, his darling prejudice; and bewailed, like an infant, his unlucky conversion, which had stolen away his God, and left his mind without any visible object of faith or devotion.<sup>3</sup>

III. Such were the fleeting shadows of the Deities. A more substantial, though less simple, hypothesis, was contrived by Cerinthus of Asia,<sup>4</sup>

III. Dou-  
ble nature  
of Cerin-  
thus.

<sup>2</sup> The pilgrim Cosmas, who visited Egypt in the beginning of the vii. century, observes and denounces the reign of anthropomorphism among the monks, who were not conscious that they embraced the system of Epicurus. (*Geogr. de Nat. Libani*, i. 18, 24). An ancient popemaster gave anthropomorphism, qui per totam provinciam Egyptum circulator, per simplicitatis erroris amplexum est, ut e contrario numerorum pontificum, / Theophilus, velut heresi gravissimum depravatum, per maximam aciem ab universis fratribus ab omni potestate detestandum, (*Caesari, Collation. x. 2*). As long as St. Augustine resented a Manicheism, he was scandalized by the anthropomorphism of the vulgar Catholics.

<sup>3</sup> Ita ut in causis suis deinde confusus, in quod sunt *antitropomorphites* (Delsart), quum proponere illis in evan- gelio esset ab eis de suo corde contritum, ut in amplexum fides, etiam quo singulis reperta promissa, in terram perstratus, cum exultantibus proclamaret,—"Res me miserum!" inlerunt a me Deum habere, et quia nunc tenent non habet, vel quia advenit, aut interpositum jam esset. (*Caesari, Collat. x. 2*).

<sup>4</sup> St. John and Cerinthus (A. D. 80, *Cheris Hist. Eccles. p. 403*) essentially live in the path of Ephesus; but the specific fed from

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 who dared to oppose the last of the apostles. Placed on the confines of the Jewish and Gentile world, he laboured to reconcile the Gnostic with the Ebionite, by confessing in the same Messiah the supernatural union of a man and a God: and this mystic doctrine was adopted with many fanciful improvements by Carpocrates, Basilides, and Valentine,\* the heretics of the Egyptian school. In their eyes, Jesus of Nazareth was a mere mortal, the legitimate son of Joseph and Mary; but he was the best and wisest of the human race, selected as the worthy instrument to restore upon earth the worship of the true and supreme Deity. When he was baptized in the Jordan, the CHURCH, the first of the aeons, the Son of God himself, descended on Jesus in the form of a dove, to enlighten his mind, and direct his actions during the allotted period of his ministry. When the Messiah was delivered into the hands of the Jews, the Christ,

from the heretic, but the teaching should dwell on them both. This Gnostic story, republished by Dr. Middleton, (*Miscellaneous Works*, vol. 48, is refuted however by Irénæus, lib. 3, in the evidence of Polycarp, and was probably dated in the time and residence of Christianity. The obsolete, yet probably the true, reading of 1 John, iv, 7, *omnis qui habet*—alludes to the double nature of that primitive heretic.

\* The Valentines taught a twofold, and almost heretical, system.—1. Both Christ and Jesus were men, though at different degrees; the one acting as the universal soul, the other as the divine spirit, of the universe. 2. At the time of the passion, they both retired, and left only a sensitive-soul and an human body. 3. Even that body was universal, and perhaps, apparent.—Such are the laborious conclusions of Meilichamp. But I much doubt whether the Latin translation understood Irénæus, and whether Irénæus told the Valentines such dangerous doctrines.

an immortal and impassible being, forsook his earthly tabernacle, flew back to the *pleroma* or world of spirits, and left the solitary Jesus to suffer, to complain, and to expire. But the justice and generosity of such a desertion are strongly questionable; and the fate of an innocent martyr, at first impelled, and at length abandoned, by his divine companion, might provoke the pity and indignation of the profane. Their murmurs were variously silenced by the sectaries who espoused and modified the double system of Cerinthus. It was alleged, that when Jesus was nailed to the cross, he was endowed with a miraculous apathy of mind and body, which rendered him insensible of his apparent sufferings. It was affirmed, that these momentary, though real, pangs, would be abundantly repaid by the temporal reign of a thousand years, reserved for the Messiah in his kingdom of the new Jerusalem. It was insinuated, that if he suffered, he deserved to suffer; that human nature is never absolutely perfect; and that the cross and passion might serve to expiate the venial transgressions of the son of Joseph, before his mysterious union with the son of God.\*

IV. All those who believe the immateriality of the soul, a specious and noble tenet, must confess, from their present experience, the incom-

IV. *These*  
*Interpretation*  
*of Apollonius*  
*Philo.*

\* The Jews uttered the passionate exclamation of "My God, My God, why hast thou forsaken me!" Hecceus, who has drawn an elegant, but indecent, parallel between Christ and Socrates, forgets that not a word of impatience or despair escaped from the mouth of the dying philosopher. In the Messiah, such sentiments could be only apparent; and such ill-sounding words are properly explained as the application of a psalm and prophecy.



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prehensible union of mind and matter. A similar union is not inconsistent with a much higher, or even with the highest degree, of mental faculties; and the incarnation of an æon or archangel, the most perfect of created spirits, does not involve any positive contradiction or absurdity. In the age of religious freedom, which was determined by the council of Nice, the dignity of Christ was measured by private judgment, according to the indefinite rule of scripture, or reason, or tradition. But when his pure and proper divinity had been established on the ruins of Arianism, the faith of the catholics trembled on the edge of a precipice, where it was impossible to recede, dangerous to stand, dreadful to fall; and the manifold inconveniences of their creed were aggravated by the sublime character of their theology. They hesitated to pronounce, *that* God himself, the second person of an equal and consubstantial trinity, was manifested in the flesh; *that* a being who pervades the universe, had been confined in the womb of Mary; *that* his eternal duration had been marked by the days, and months, and years, of human existence; *that* the Almighty

[ This strong expression might be justified by the language of St Paul, (1 Tim. iii. 16); but we are deterred by our modern bias. The word *I (which)* was altered to *for (God)* at Constantinople in the beginning of the sixth century: the true reading, which is visible in the Latin and Syrian versions, still exists in the remaining of the Greek, as well as of the Latin fathers; and this found, with that of the *the-  
omismos* of St John, is admirably collected by Sir Isaac Newton, (see his two letters translated by M. de Mure, in the *Journal Britannique*, tom. iv, p. 148-150, 331-390). I have weighed the arguments, and may yield to the authority, of the best of philosophers, who was deeply skilled in critical and theological studies.

had been scourged and crucified; *that* his imperishable essence had felt pain and anguish; *that* his omniscience was not exempt from ignorance; and *that* the source of life and immortality expired on Mount Calvary. These alarming consequences were affirmed with unblushing simplicity by Apollinaris, Bishop of Laodicea, and one of the luminaries of the church. The son of a learned grammarian, he was skilled in all the sciences of Greece: eloquence, erudition, and philosophy, conspicuous in the volumes of Apollinaris, were humbly devoted to the service of religion. The worthy friend of Athanasius, the worthy antagonist of Julian, he bravely wrestled with the Arians and Polytheists, and, though he affected the rigour of geometrical demonstration, his commentaries revealed the literal and allegorical sense of the scriptures. A mystery which had long floated in the looseness of popular belief, was defined by his perverse diligence in a technical form; and he first proclaimed the memorable words,—“One incarnate nature of Christ,” which are still re-echoed with hostile clamours in the churches of Asia, Egypt, and Ethiopia. He taught that the Godhead was united or mingled with the body of a man; and that the *Logos*, the eternal wisdom, supplied in the flesh the

\* For Apollinaris and his sect, see Socrates, l. ii. c. 46; C. III. c. 10; Sozomen, l. v. c. 18; l. vi. c. 23, 27; Theodoret, l. v. c. 10, 11; Tillemont, *Mémoires Eclesiastiques*, tom. vii. p. 308-329; Hist. p. 798-799, in 4to, Venice 1722. The contemporary writers always mention the bishop of Laodicea as a friend and brother. The style of the more recent historians is harsh and hostile; yet Thirlwall compares him (p. viii. in 11-12) to Basil and Gregory.

place and office of an human soul. Yet as the profound doctor had been terrified at his own rashness, Apollinaria was heard to mutter some faint accents of excuse and explanation. He acquiesced in the old distinction of the Greek philosophers, between the rational and sensitive soul of man: that he might reserve the *Logos* for intellectual functions, and employ the subordinate human principle in the menial actions of animal life. With the moderate Docetes, he revered Mary as the spiritual, rather than as the carnal, mother of Christ, whose body either came from heaven, impassible and incorruptible, or was absorbed, and as it were transformed, into the essence of the Deity. The system of Apollinaria was strenuously encountered by the Asiatic and Syrian divines, whose schools are honoured by the names of Basil, Gregory, and Chrysostom, and tainted by those of Diodorus, Theodore, and Nestorius. But the person of the aged bishop of Laodicea, his character and dignity, remained inviolate, and his rivals, since we may not suspect them of the weakness of toleration, were astonished, perhaps, by the novelty of the argument, and dissident of the final sentence of the catholic church. Her judgment at length inclined in their favour: the heresy of Apollinaria was condemned, and the separate congregations of his disciples were proscribed by the imperial laws. But his principles were secretly entertained in the monasteries of Egypt, and his enemies felt the hatred of Theophylus and Cyril the successive patriarchs of Alexandria.

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dus con-  
sent and  
verbal dis-  
putes.

V. The grovelling Ebionite, and the phantastic Docetes, were rejected and forgotten; the recent zeal against the errors of Apollinaris, reduced the catholics to a seeming agreement with the double nature of Cerinthus. But instead of a temporary and occasional alliance, *they* established, and we still embrace, the substantial, indissoluble, and everlasting union of a perfect God with a perfect man, of the second person of the trinity with a reasonable soul and human flesh. In the beginning of the fifth century, the *unity* of the *two natures* was the prevailing doctrine of the church. On all sides, it was confessed, that the mode of their co-existence could neither be represented by our ideas, nor expressed by our language. Yet a secret and incurable discord was cherished, between those who were most apprehensive of confounding, and those who were most fearful of separating, the divinity, and the humanity, of Christ. Impelled by religious frenzy, they fled with adverse haste from the error which they mutually deemed most destructive of truth and salvation. On either hand they were anxious to guard, they were jealous to defend, the union and the distinction of the two natures, and to invent such forms of speech, such symbols of doctrine, as were least susceptible of doubt or ambiguity. The poverty of ideas and language tempted them to ransack art and nature for every possible comparison, and each comparison misled their fancy in the explanation of an incomparable mystery. In the polemic microscope, an atom is enlarged to a monster, and each party was skillful



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to exaggerate the absurd or impious conclusions that might be extorted from the principles of their adversaries. To escape from each other, they wandered through many a dark and devious thicket, till they were astonished by the horrid phantoms of Cerinthus and Apollinaris, who guarded the opposite issues of the theological labyrinth. As soon as they beheld the twilight of sense and heresy, they started, measured back their steps, and were again involved in the gloom of impetrable orthodoxy. To purge themselves from the guilt or reproach of damnable error, they disavowed their consequences, explained their principles, excused their indiscretions; and unanimously pronounced the sounds of concord and faith. Yet a latent and almost invisible spark still lurked among the embers of controversy: by the breath of prejudice and passion, it was quickly kindled to a mighty flame, and the verbal disputes of the oriental sects have shaken the pillars of the church and state.

Cyrol, for-  
march of  
Alexan-  
dia,  
A. D. 412,  
Oct. 18—  
A. D. 444,  
June 27.

The name of Cyril of Alexandria is famous in controversial story, and the title of saint is a mark that his opinions and his party have finally prevailed. In the house of his uncle, the archbishop Theophilus, he imbibed the orthodox lessons of

<sup>1</sup> I appeal to the confusion of two oriental prelates, Gregory Abulpharas the Jacobite primate of the East, and Elias the Nestorian metropolitan of Damascus, (see Assemani Bibliothec. Oriental. tom. ii. p. 281; tom. iii. p. 514, &c.), that the Melchites, Jacobites, Nestorians, &c. agree in the doctrine, and differ only in the expression. Our most learned and rational Critics—Beza, Le Clerc, Bénédict, La Caze, Michæm, Jahnke, &c.—are inclined to favour this charitable judgment; but the zeal of Petavio is loud and angry, and the moderation of Dupin is conveyed in a whisper.



zeal and dominion, and five years of his youth were profitably spent in the adjacent monasteries of Nitria. Under the tuition of the abbot Serapion, he applied himself to ecclesiastical studies, with such indefatigable ardour, that in the course of one sleepless night, he has perused the four gospels, the catholic epistles, and the epistle to the Romans. Origen he detested; but the writings of Clemens and Dionysius, of Athanasius and Basil, were continually in his hands: by the theory and practice of dispute, his faith was confirmed and his wit was sharpened; he extended round his cell the cobwebs of scholastic theology, and meditated the works of allegory and metaphysics, whose remains, in seven verbose folios, now peaceably slumber by the side of their rivals.\* Cyril prayed and fasted in the desert, but his thoughts (it is the reproach of a friend†) were still fixed on the world; and the call of Theophilus, who summoned him to the tumult of cities and synods, was too readily obeyed by the aspiring hermit. With the approbation of his uncle, he assumed the office, and acquired the fame, of a popular preacher. His comely person adorned the pulpit, the harmony of his voice resounded in the cathedral, his friends were sta-

\* La Croix (*Hist. du Christianisme des Indes*, tom. 4, p. 24) accuses his contemporaries for the gross and writings of Cyril. De tout les ouvrages des anciens, il y en a peu qu'on lise avec moins d'attention; and Dupin, (*Bibliothèque des écrivains*, tom. 4, p. 42-53), in words of respect, recommends to dispise them.

† Of Isidore of Pelusium, (l. 4, epist. 23, p. 8). As the letter is not of the most creditable sort, Tillamont, less sincere than the Ballandote, offers a doubt whether this Cyril is the nephew of Theophilus, (*Mon. Ecclésiast.* tom. 27, p. 288).



office with scenes of death: and the prefects of Egypt were awed or provoked by the temporal power of these Christian pontiffs. Ardent in the prosecution of heresy, Cyril suspiciously opened his reign by oppressing the Novatians, the most innocent and harmless of the sectaries. The interdiction of their religious worship appeared in his eyes a just and meritorious act: and he confiscated their holy vessels, without apprehending the guilt of sacrilege. The toleration, and even the privileges, of the Jews, who had multiplied to the number of forty thousand, were secured by the laws of the Cæsars and Ptolemies; and a long prescription of seven hundred years since the foundation of Alexandria. Without any legal sentence, without any royal mandate, the patriarch, at the dawn of day, led a seditious multitude to the attack of the synagogues. Unarmed and unprepared, the Jews were incapable of resistance: their houses of prayer were levelled with the ground, and the episcopal warrior, after rewarding his troops with the plunder of their goods, expelled from the city the remnant of the unbelieving nation. Perhaps he might plead the insolence of their prosperity, and their deadly hatred of the Christians, whose blood they had recently shed in a malicious or

the deed. They gradually enlarged, abused, and sold, the privileges of their order. Their outrageous conduct under the reign of Cyril provoked the emperor to deprive the patriarch of their nomination, and restricted their number to five or six hundred. But those restrictions were transient and ineffectual. See the Theodosian Code, l. 12, c. 1, and Tolantini, Mem. Eccles. tom. xlv, p. 276-278.

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accidental tumult. Such crimes would have deserved the animadversion of the magistrate; but in this promiscuous outrage, the innocent were confounded with the guilty, and Alexandria was impoverished by the loss of a wealthy and industrious colony. The zeal of Cyril exposed him to the penalties of the Julian law; but in a feeble government, and a superstitious age, he was secure of impunity, and even of praise. Orestes complained; but his just complaints were too quickly forgotten by the ministers of Theodosius, and too deeply remembered by a priest who affected to pardon, and continued to hate, the prefect of Egypt. As he passed through the streets, his chariot was assaulted by a band of five hundred of the Nitrian monks; his guards fled from the wild beasts of the desert; his protestations that he was a Christian and a catholic, were answered by a volley of stones, and the face of Orestes was covered with blood. The loyal citizens of Alexandria hastened to his rescue; he instantly satisfied his justice and revenge against the monk by whose hand he had been wounded; and Ammonius expired under the rod of the lictor. At the command of Cyril, his body was raised from the ground, and transported, in solemn procession, to the cathedral; the name of Ammonius was changed to that of *Theodosius the wonderful*; his tomb was decorated with the trophies of martyrdom, and the patriarch ascended the pulpit to celebrate the magnanimity of an assassin and a rebel. Such honours might incite the faithful to combat and die under the banners of the saint; and he

soon prompted, or accepted, the sacrifice of a virgin, who professed the religion of the Greeks, and cultivated the friendship of Orestes. Hypatia, the daughter of Theon the mathematician, was initiated in her father's studies: her learned comments have elucidated the geometry of Apollonius and Diophantus; and she publicly taught, both at Athens and Alexandria, the philosophy of Plato and Aristotle. In the bloom of beauty, and in the maturity of wisdom, the modest maid refused her lovers and instructed her disciples; the persons most illustrious for their rank or merit were impatient to visit the female philosopher; and Cyril beheld, with a jealous eye, the gorgeous train of horses and slaves who crowded the door of her academy. A rumour was spread among the Christians, that the daughter of Theon was the only obstacle to the reconciliation of the prefect and the archbishop; and that obstacle was speedily removed. On a fatal day, in the holy season of Lent, Hypatia was torn from her chariot, stripped naked, dragged to the church, and inhumanly butchered by the hands of Peter the reader, and a troop of savage and merciless fanatics: her flesh was scraped from her bones with sharp oyster shells.

\* For Theon, and his daughter Hypatia, see Fabricius, Bibliotheca Græcæ, viii, p. 210, 211. Her attainments in the Liberal Sciences are various and original. Herycius (Museum, tom. vii, p. 205, 206) observes, that she was prosecuted for her writings against idolatry and idolatry in the Greek Anthology (M. i, c. 76, p. 155, edit. Brunck) celebrates her knowledge and eloquence. She is honourably mentioned (Epist. 10, 13, 16, 25-30, 124, 125, 126) by her friend and disciple the philosophic bishop Synesius.

\* *Oyster-shells, and similar instruments, &c.* Oyster-shells were plentifully shewed on the sea-beach before the Consular. I may therefore



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\*\*\*\*\*

and her quivering limbs were delivered to the flames. The just progress of inquiry and punishment was stopped by seasonable gifts; but the murder of Hypatia has imprinted an indelible stain on the character and religion of Cyril of Alexandria.\*

Nestorius,  
patriarch  
of Con-  
stantino-  
ple.  
A. D. 428.  
April 10.

Superstition, perhaps, would more gently expiate the blood of a virgin, than the banishment of a saint; and Cyril had accompanied his uncle to the iniquitous synod of the oak. When the memory of Chrysostom was restored and consecrated, the nephew of Theophilus, at the head of a dying faction, still maintained the justice of his sentence; nor was it till after a tedious delay and an obstinate resistance, that he yielded to the consent of the catholic world.† His enmity to the Byzantine pontiffs‡ was a sense of interest, not a sally of passion: he envied their fortunate station in the sunshine of the imperial

therefore prefer the literal sense, without rejecting the unimpeached version of *regula, illis*, which is used by M. de Valois. I am ignorant, and the minutes were probably regular, whether their victim was yet alive.

\* These exploits of St. Cyril are recorded by Socrates, (l. vii. c. 13, 14, 15); and the most reluctant bigotry is compelled to copy an historian who coolly styles the murderers of Hypatia *adversarii*. At the mention of that injured name, I am pained to observe a blush even on the cheek of Hermin, (A. D. 412, N° 485).

† He was deaf to the entreaties of Athanasius of Constantinople, and of Isidore of Paltamum, and yielded only *ex vi vi* before Nestorius, l. xiv. c. 18; to the personal intercession of the Virgin. Yet in his last years he still muttered, that John Chrysostom had been justly condemned, (Tillemont, *Mém. Eccles.* tom. xiv. p. 278-282. Bressanuz, *Annal. Eccles.* A. D. 412, N° 46-48).

‡ See their characters in the history of Socrates, (l. vii. c. 23-28); their power and pretensions, in the huge compilation of Theophaſt, (*Discipline de l'Eglise*, tom. i. p. 80-91).

court; and he dreaded their upstart ambition, which oppressed the metropolitans of Europe and Asia, invaded the provinces of Antioch and Alexandria, and measured their diocess by the limits of the empire. The long moderation of Atticus, the mild usurper of the throne of Chrysostom, suspended the animosities of the eastern patriarchs; but Cyril was at length awakened by the exaltation of a rival more worthy of his esteem and hatred. After the short and troubled reign of Sisinnius bishop of Constantinople, the factions of the clergy and people were appeased by the choice of the emperor, who, on this occasion, consulted the voice of fame, and invited the merit of a stranger. Nestorius,\* a native of Germanicia, and a monk of Antioch, was recommended by the austerity of his life, and the eloquence of his sermons; but the first homily which he preached before the devout Theodosius betrayed the acrimony and impatience of his zeal. "Give me, O Caesar!" he exclaimed, "give me the earth purged of heretics, and I will give you in exchange the kingdom of heaven. Exterminate with me, the heretics; and with you, I will exterminate the Persians." On the fifth day, as if the treaty had been already signed, the patriarch of Constantinople discovered, surprised, and attacked a secret conventicle of the Arians: they preferred death to submission; the flames

\* His elevation and conduct are described by Sozomen, li. vii. c. 29, 33; and Marcellinus seems to have applied the Insuperbiae gentis, tabulae gentis, of Sallust.

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that were killed by their despair, soon spread to the neighbouring houses, and the triumph of Nestorius was clouded by the name of *incendiary*. On either side of the Hellespont, his episcopal vigour imposed a rigid formulary of faith and discipline: a chronological error concerning the festival of Easter was punished as an offence against the church and state. Lydia and Caria, Sardes and Miletus, were purified with the blood of the obstinate Quartodecimans: and the edict of the emperor, or rather of the patriarch, enumerates three and twenty degrees and demoninations in the guilt and punishment of *heresy*.<sup>\*</sup> But the sword of persecution, which Nestorius so furiously wielded, was soon turned against his own breast. Religion was the pretence; but, in the judgment of a contemporary saint, ambition was the genuine motive of episcopal warfare.<sup>†</sup>

His heresy,  
A. D. 429.  
431.

In the Syrian school, Nestorius had been taught to abhor the confusion of the two natures, and nicely to discriminate the humanity of his *master* Christ from the divinity of the *Lord* Jesus.<sup>‡</sup> The

\* Cod. Theodos. l. xxi. tit. 1, leg. 65, with the illustrations of Bingham, (A. D. 428. N°. 23, Sec.); Godefray, (ad. locum), and Pagi. (Christ., tom. ii. p. 309).

† Father of Polusium, (l. iv. epist. 57). His words are strong and candid—*ei furores, et non in eis expressum fuit, ut homo specie infans representaretur, cum philosophus vellegaretur.* Indeed he is saint, but he never became a bishop; and I half suspect, that the pride of Hieronymus originated in the pride of Pious.

‡ La Croix (*Christianisme des Indes*, tom. i. p. 54-55; Thesaurus Apocryphus Le Constant, tom. iii. p. 270-279) has detected the use of *teacher*, and *master* terms, which, in the 10th, 11th, and 12th centuries, discriminate the school of Hieronymus of Tarsus and his Neoplatonist disciples.

Blessed Virgin he revered as the mother of Christ, but his ears were offended with the rash and recent title of mother of God,<sup>1</sup> which had been insensibly adopted since the origin of the Arian controversy. From the pulpit of Constantinople, a friend of the patriarch, and afterwards the patriarch himself, repeatedly preached against the use, or the abuse, of a word<sup>2</sup> unknown to the apostles, unauthorized by the church, and which could only tend to alarm the timorous, to mislead the simple, to amuse the profane, and to justify, by a seeming resemblance, the old genealogy of Olympus.<sup>3</sup> In his calmer moments Nestorius confessed, that it might be tolerated or excused by the union of the two natures, and

<sup>1</sup> *θεοτοκος*—*Deipara*: as in zoology we familiarly speak of oviparous and viviparous animals. It is not easy to fix the insertion of this word, which La Crosse (*Chrestomathie des Indes*, tom. 4, p. 16) ascribes to Eusebius of Cæsarea and the Arians. The orthodox testimonies are produced by Cyril and Peter of Alexandria, (*Ogynot. Theolog.* tom. 6, l. v. c. 18, p. 254, &c.) but the veracity of the value is questionable, and the spirit of dissent so easily slides from the margin to the text of a catholic MS.

<sup>2</sup> Harnage, in his *Histoire de l'Eglise*, a work of controversy, tom. 1, p. 303, justifies the mother, by the blood of God, (Acts, xi. 24, with Mill's various readings). But the Greek MSS. are far from unanimous; and the primitive style of the blood of Christ is preserved in the Syriac version, even in those copies which were used by the Christians of St. Thomas on the coast of Malabar; (*La Crosse, Chrestomathie des Indes*, tom. 4, p. 347). The jealousy of the Nestorians and Monophysites has guarded the purity of their text.

<sup>3</sup> The pagans of Egypt already laughed at the new Cybele of the Christians, (John. I. l. epist. 54); a letter was forged in the name of Hypatia, to ridicule the theology of her assassin, (Synodicon, c. 216, de la tom. Council. p. 484). In the article of Nestorius, Bayle has introduced some loose philosophy on the morality of the Virgin Mary.

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the communication of their *idions*;<sup>2</sup> but he was exasperated, by contradiction, to disclaim the worship of a new-born, an infant Deity; to draw his inadequate similes from the conjugal or civil partnerships of life, and to describe the manhood of Christ as the robe, the instrument, the tabernacle of his Godhead. At these blasphemous sounds, the pillars of the sanctuary were shaken. The unsuccessful competitors of Nestorius indulged their pious or personal resentment, the Byzantine clergy was secretly displeased with the intrusion of a stranger: whatever is superstitious or absurd, might claim the protection of the monks; and the people was interested in the glory of their virgin patroness.<sup>3</sup> The sermons of the archbishop, and the service of the altar, were disturbed by seditious clamour; his authority and doctrine were renounced by separate congregations; every wind scattered round the empire the leaves of controversy; and the voice of the combatants on a sonorous theatre re-echoed in the cells of Palestine and Egypt. It was the duty of Cyril to enlighten the zeal and ignorance of his innumerable monks: in the school of Alexandria, he had imbibed and professed the incarnation of one nature: and the successor of Athanasius consulted his pride and ambition, when he rose in arms against another Arius.

<sup>2</sup> The *synchysis* of the Greeks, a mutual loss or transfer of the *idions* or properties of each nature to the other—of actually to unite, possibly to God, &c. Twelve rules on this sort of subjects compose the Theological Grammar of Petavius, (*Deunita Theolog.* tom. v. l. 1. c. 14, 15. p. 200, &c.)

<sup>3</sup> See Denzige, C. P. Christians, l. ii. p. 20, &c.



more formidable and more guilty, on the second throne of the hierarchy. After a short correspondence, in which the rival prelates disguised their hatred in the hollow language of respect and charity, the patriarch of Alexandria denounced to the prince and people, to the East and to the West, the damnable errors of the Byzantine pontiff. From the East, more especially from Antioch, he obtained the ambiguous counsels of toleration and silence, which were addressed to both parties while they favoured the cause of Nestorius. But the Vatican received with open arms the messengers of Egypt. The vanity of Celestine was flattered by the appeal; and the partial version of a monk decided the faith of the pope, who, with his Latin clergy, was ignorant of the language, the arts, and the theology of the Greeks. At the head of an Italian synod, Celestine weighed the merits of the cause, approved the creed of Cyril, condemned the sentiments and person of Nestorius, degraded the heretic from his episcopal dignity, allowed a respite of ten days for recantation and penance, and delegated to his enemy the execution of this rash and illegal sentence. But the patriarch of Alexandria, whilst he darted the thunders of a god, exposed the errors and passions of a mortal; and his twelve anathemas\* still torture the orthodox slaves, who adore the memory of a saint, without forfeiting their allegiance to the synod

\* Council tom. iii. p. 642. They have never been formally approved by the church. (Tollent, *Mém. Ecclésiast.* tom. ix. p. 308-314.) I almost pity the agents of rage and enmity with which Præsius seems to be agitated in the sixth book of his *Diogenes*. Halliwell.

CHAP. of Chalcedon. These bold assertions are indeli-  
 XLVII. bly tinged with the colours of the Apollinarian  
 heresy; but the serious, and perhaps the sin-  
 cere, professions of Nestorius have satisfied the  
 wiser and less partial theologians of the present  
 times.\*

First coun-  
 cil of  
 Ephesus,  
 A. D. 431,  
 June—  
 October.

Yet neither the emperor nor the primate of  
 the East were disposed to obey the mandate  
 of an Italian priest; and a synod of the catho-  
 lic, or rather of the Greek church, was unani-  
 mously demanded as the sole remedy that  
 could appease or decide this ecclesiastical quar-  
 rel.† Ephesus, on all sides accessible by sea and  
 land, was chosen for the place, the festival  
 of Pentecost for the day, of the meeting: a  
 writ of summons was despatched to each me-  
 tropolitan, and a guard was stationed to protect  
 and confine the fathers till they should settle the  
 mysteries of heaven, and the faith of the earth.  
 Nestorius appeared not as a criminal, but as a  
 judge; he depended on the weight rather than the

\* See in the rational *Barroge*, (ed. tom. 1, Varior. Lection. Councili in  
 Florent. c. 11, p. 11-23), and *La Cress*, the universal scholar, (*Chro-  
 nicologie des Indes*, tom. 1, p. 14-47; *De l'Ethiopia*, p. 25, 27; *Thes-  
 aur. Epist.* p. 476, &c. 283, 285). His free sentence is confirmed by  
 that of his friends *Jablonicki* (*Thesaur. Epist.* tom. 1, p. 165-201) and  
*Moshelm*, (*ibidem*, p. 304; Nestorius criminalis accusatus et cum omni  
 civitate) and three more respectable judges will not easily be found.  
*Asseman*, a learned and modest slave, has hardly done (*Bibliothec.  
 Orient. tom. iv*, p. 190-234) the guilt and error of the Nestorians.

† The origin and progress of the Nestorian controversy, till the  
 council of Ephesus, may be found in *Socrus*, lib. vi, c. 22; *Eusebius*,  
 O. 4, c. 1, 2; *Libanius*, (*Brev. c. 1-4*); the original state,  
 (*Council. tom. iii*, p. 551-591, edit. Vossius, 1729); the *Annals* of  
*Baronius* and *Pagi*, and the faithful collection of *Villmann*, (*Mem.  
 Norick. tom. xiv*, p. 281-317).

number of his prelates, and his sturdy slaves from the baths of Zeuxippus were armed for every service of injury or defence. But his adversary Cyril was more powerful in the weapons both of the flesh and of the spirit. Disobedient to the letter, or at least to the meaning, of the royal summons, he was attended by fifty Egyptian bishops, who expected from their patriarch's nod the inspiration of the Holy Ghost. He had contracted an intimate alliance with Memnon bishop of Ephesus: The despotic primate of Asia disposed of the ready succours of thirty or forty episcopal votes; a crowd of peasants, the slaves of the church, was poured into the city to support with blows and clamours a metaphysical argument; and the people zealously asserted the honour of the Virgin, whose body reposed within the walls of Ephesus.\* The fleet which had transported Cyril from Alexandria, was laden with the riches of Egypt; and he disembarked a numerous body of mariners, slaves, and fanatics, infisted with blind obedience under the banner of St. Mark and the mother of God. The fathers, and even the guards, of the council were awed by this martial array; the adversaries of Cyril and Mary were insulted in the streets, or

\* The Christians of the four first centuries were ignorant of the death and burial of Mary. The tradition of Ephesus is attested by the synod, under Theodosius Augustus, and a *hieronographus* Irenæus (Ephesus, tom. iii. p. 1102) yet it has been superseded by the claim of Jerusalem; and her empty sepulchre, as it was shown to the pilgrims, justified the fable of her interment and assumption, in which the Greek and Latin churches have plainly disagreed. See Baronius (Annal. Eccles. A. D. 431, 29. 8, &c.) and Tillamont, (Met. Eccles. tom. V. p. 487-477).

CHAP.  
SEVIL  
CONTINUED

threatened in their houses; his eloquence and liberality made a daily increase in the number of his adherents; and the Egyptian soon computed that he might command the attendance and the voices of two hundred bishops.\* But the author of the twelve anathemas foresaw and dreaded the opposition of John of Antioch, who with a small though respectable train of metropolitans and divines, was advancing by slow journeys from the distant capital of the East. Impatient of a delay which he stigmatized as voluntary and culpable,† Cyril announced the opening of the synod sixteen days after the festival of Pentecost. Nestorius, who depended on the near approach of his eastern friends, persisted, like his predecessor Chrysostom, to disclaim the jurisdiction and to disobey the summons of his enemies: they hastened his trial, and his accuser presided in the seat of judgment. Sixty-eight bishops, twenty-two of metropolitan rank, defended his cause by a modest and temperate protest: they were excluded from the councils of their brethren. Constans, in the emperor's name, requested a delay of four days: the profane in-

\* The Acts of Chalcedon (Council tom. iv, p. 1405, 1406) exhibit a lively picture of the blind, desperate servitude of the bishops of Egypt to their patriarch.

† Cyril or ecclesiastical business detained the bishops at Antioch till the fifth of May. Ephesus was at the distance of thirty days' journey; and ten days more may be fairly allowed for sickness and repose. The march of Xenophon over the same ground enumerates above 360 passages or leagues; and this measure might be illustrated, if from ancient and modern histories, if I knew how to compare the speed of an army, a synod, and a caravan. John of Antioch is unfortunately mentioned by Theodoret himself, (*Mém. Ecclési.* tom. xiv, p. 786-789).

gistrate was driven with outrage and insult from the assembly of the saints. The whole of this momentous transaction was crowded into the compass of a summer's day; the bishops delivered their separate opinions; but the uniformity of style reveals the influence or the hand of a master, who has been accused of corrupting the public evidence of their acts and subscriptions. Without a dissenting voice, they recognised in the epistles of Cyril, the Nicene creed and the doctrine of the fathers: but the partial extracts from the letters and homilies of Nestorius were interrupted by curses and anathemas; and the heretic was degraded from his episcopal and ecclesiastical dignity. The sentence, maliciously inscribed to the new Julius, was affixed and proclaimed in the streets of Ephesus: the weary prelates, as they issued from the church of the mother of God, were saluted as her champions; and her victory was celebrated by the illuminations, the songs, and the tumult of the night.

CHAP.  
XIV.  
Consideration  
of Nursing,  
June 22.

On the fifth day, the triumph was clouded by the arrival and indignation of the eastern bishops. In a chamber of the inn, before he had wiped the dust from his shoes, John of Antioch gave audience to Candidian the imperial minister; who related his ineffectual efforts to prevent or to annul the hasty violence of the Egyptian.

Opposition  
of the Ori-  
entals,  
June 27,  
86.

1. *Disaffirmation* is not a *rescissio* in the strict sense; it is a mere annulment of the law as it was, the solemn enactment itself is *rescinditur*. Krugger, *l.c.*, p. 7. The *rescinditio* was urged by Count Armand, *ibid.*, p. 1899, and the orthodox critics do not find it an easy task to defend the priority of the French or Latin version of the Acts.



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With equal haste and violence, the oriental synod of fifty bishops degraded Cyril and Memnon from their episcopal honours, condemned, in the twelve anathemas, the purest venom of the Apollinarian heresy, and described the Alexandrian primate as a monster, born and educated for the destruction of the church.\* His throne was distant and inaccessible: but they instantly resolved to bestow on the flock of Ephesus the blessing of a faithful shepherd. By the vigilance of Memnon, the churches were shut against them, and a strong garrison was thrown into the cathedral. The troops, under the command of Candidian, advanced to the assault: the outguards were routed and put to the sword, but the place was impregnable: the besiegers retired: their retreat was pursued by a vigorous sally: they lost their horses, and many of the soldiers were dangerously wounded with clubs and stones. Ephesus, the city of the Virgin, was defiled with rage and clamour, with sedition and blood: the rival synods darted anathemas and excommunications from their spiritual engines; and the court of Theodosius was perplexed by the adverse and contradictory narratives of the Syrian and Egyptian factions. During a busy period of three months, the emperor tried every method, except the most effectual means of indifference and contempt, to reconcile this theological quarrel. He attempt-

\* *Hisce sanctis concilioque orthodoxis synodo.* After the union of John and Cyril, these sentences were mutually forgotten. The style of denunciation must never be confounded with the gentle sense which respectable persons entertain of each other's merit, (Cass. *et. tom. III. p. 1244*).

ed to remove or intimidate the leaders by a common sentence of acquittal or condemnation: he invested his representatives at Ephesus with ample power and military force: he summoned from either party eight chosen deputies to a free and candid conference in the neighbourhood of the capital, far from the contagion of popular frenzy. But the Orientals refused to yield, and the Catholics, proud of their numbers and of their Latin allies, rejected all terms of union or toleration. The patience of the meek Theodosius was provoked, and he dissolved in anger this episcopal tumult, which at the distance of thirteen centuries assumes the venerable aspect of the third œcumenical council.\* "God is my witness," said the pious prince, "that I am not the author of this confusion. His providence will discern and punish the guilty. Return to your provinces, and may your private virtues repair the mischief and scandal of your meeting." They returned to their provinces; but the same passions which had distracted the synod of Ephesus were diffused over the eastern world. After three obstinate and equal campaigns, John of Antioch and Cyril of Alexandria condescended to explain and embrace: but their seeming reunion must be imputed rather to prudence than

\* See the Acts of the Synod of Ephesus, in the original Greek, and a Latin version almost contemporary, (Concil. tom. II, p. 391-439, with the Synodical adscript Trigonium Invenit. tom. IV, p. 235-467): the Ecclesiastical Histories of Sozomen, (l. vii, c. 24), and Irenæus, (l. i, c. 3, 4, 5), and the Breviary of Liberatus, (in Concil. tom. VI, p. 415-459, c. 2, 5), and the Menologe Euthym. of Tillamont, (tom. XII, p. 317-467).

CHIL. to reason, to the mutual lassitude rather than to  
XIV. the Christian charity of the patriarchs.

Victory of  
Cyril, A.D.  
431-433.

The Byzantine pontiff had instilled into the royal ear a baleful prejudice against the character and conduct of his Egyptian rival. An epistle of menace and invective,<sup>\*</sup> which accompanied the summons, accused him as a lousy, insolent, and envious priest, who perplexed the simplicity of the faith, violated the peace of the church and state, and, by his artful and separate addresses to the wife and sister of Theodosius, presumed to suppose, or to scatter, the seeds of discord in the imperial family. At the stern command of his sovereign, Cyril had repaired to Ephesus, where he was resisted, threatened, and confined, by the magistrates in the interest of Nestorius and the Orientals; who assembled the troops of Lydia and Ionia to suppress the fanatic and disorderly train of the patriarch. Without expecting the royal license, he escaped from his guards, precipitately embarked, deserted the imperfect synod, and retired to his episcopal fortress of safety and independence. But his artful emissaries, both in the court and city, successfully laboured to appease the resentment, and to conciliate the favour, of the emperor. The feeble son of Arcadius was alternately swayed by his wife and sister, by the eunuchs and women of the

<sup>\*</sup> *Ταπεινὸς λόγος τοῦ αυτοκράτορος ἐν ποικίλῳ ἑρμηνεύσει, καὶ ἁπλοῦς καὶ ἁπλοῦς ἀπὸ τοῦ αυτοκράτορος ἐν ποικίλῳ ἑρμηνεύσει, καὶ ἁπλοῦς καὶ ἁπλοῦς ἀπὸ τοῦ αυτοκράτορος ἐν ποικίλῳ ἑρμηνεύσει, καὶ ἁπλοῦς καὶ ἁπλοῦς ἀπὸ τοῦ αυτοκράτορος ἐν ποικίλῳ ἑρμηνεύσει, καὶ ἁπλοῦς καὶ ἁπλοῦς ἀπὸ τοῦ αυτοκράτορος ἐν ποικίλῳ ἑρμηνεύσει, καὶ ἁπλοῦς καὶ ἁπλοῦς ἀπὸ τοῦ αυτοκράτορος ἐν ποικίλῳ ἑρμηνεύσει.* I should be curious to know how much Nestorius paid for these expostions or mortifying to his rival.

palace; superstition and avarice were their ruling passions; and the orthodox chiefs were assiduous in their endeavours to alarm the former, and to gratify the latter. Constantinople and the suburbs were sanctified with frequent monasteries, and the holy abbots, Dalmatius and Eutyches, had devoted their zeal and fidelity to the cause of Cyril, the worship of Mary, and the unity of Christ. From the first moment of their monastic life, they had never mingled with the world, or trod the profane ground of the city. But in this awful moment of the danger of the church, their vow was superseded by a more sublime and indefensible duty. At the head of a long order of monks and hermits, who carried burning tapers in their hands, and chanted hymns to the mother of God, they proceeded from their monasteries to the palace. The people was edified and inflamed by this extraordinary spectacle, and the trembling monarch listened to the prayers and adjurations of the saints, who boldly pronounced, that none could hope for salvation, unless they embraced the person and the creed of the orthodox successor of Athanasius. At the same time every avenue of the throne was assaulted with gold. Under the decent names of *eulogies* and *benedictions*, the courtiers of both sexes were bribed according to the measure of their power and rapaciousness. But their incessant de-

\*Eutyches, the hierarch Eutyches, is beautifully named by Cyril as a friend, a saint, and the ardent defender of the faith. His mother, the sister Dalmatius, is likewise employed to bind the emperor and all his chamberlains to his dependence. Synodicon, s. 203, in Corall. tom. iv, p. 467.

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mands despoiled the sanctuaries of Constantinople and Alexandria; and the authority of the patriarch was unable to silence the just murmur of his clergy, that a debt of sixty thousand pounds had already been contracted to support the expence of this scandalous corruption.<sup>a</sup> Pulcheria, who relieved her brother from the weight of an empire, was the firmest pillar of orthodoxy: and so intimate was the alliance between the thunders of the synod and the whispers of the court, that Cyril was assured of success if he could displace one eunuch, and substitute another in the favour of Theodosius. Yet the Egyptian could not boast of a glorious or decisive victory. The emperor, with unaccustomed firmness, adhered to his promise of protecting the innocence of the oriental bishops; and Cyril softened his anathemas, and confessed, with ambiguity and reluctance, a two-fold nature of Christ, before he was permitted to satiate his revenge against the unfortunate Nestorius.

<sup>a</sup> Clerici quoque sui sancti patriarcharum, quod vocantur Alexandria mittit in hujusmodi turbellum et debet prout illi qua hinc transmittit ad nos filios suis parochia. Et tunc al scriptum est in presentia, sed de talis causa prout auctore scriptum est, &c. This original and original letter, from Cyril's archbishop to his brethren the new bishops of Constantinople, has been unanimously preserved in an old Latin version, (Synodicon, c. 203; Council, tom. iv. p. 463-469). The work is almost dropped, and the words speak the truest language of interest and confederacy.

<sup>b</sup> The tedious negotiations that attended the synod of Ephesus are diffusely related in the original Acta, (Council, tom. iv. p. 1739-1775; ed. de. vol. and the Synodicon, in tom. iv.) Sozomen, (l. vii. c. 28, 25, 26, 27); Eusebius, (l. i. c. 7, 8, 12); Liberatus, (c. 7-10); Tillemont, (Mémoires, Eccles. tom. xiv. p. 487-478). The more patient reader will thank me for compressing so much expense and falsehood in a few lines.



The rash and obstinate Nestorius, before the end of the synod, was oppressed by Cyril, betrayed by the court, and faintly supported by his eastern friends. A sentiment of fear or indignation prompted him, while it was yet time, to affect the glory of a voluntary abdication:<sup>1</sup> his wish, or at least his request, was readily granted; he was conducted with honour from Ephesus to his old monastery of Antioch; and, after a short pause, his successors, Maximian and Prichus, were acknowledged as the lawful bishops of Constantinople. But in the silence of his cell, the degraded patriarch could no longer resume the innocence and security of a private monk. The past he regretted; he was discontented with the present, and the future he had reason to dread: the oriental bishops successively disengaged their cause from his unpopular name, and each day decreased the number of the schismatics who revered Nestorius as the confessor of the faith. After a residence at Antioch of four years, the hand of Theodosius subscribed an edict,<sup>2</sup> which ranked him with Simon the magician, proscribed his opinions and followers, con-

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Life of  
Nestorius,  
A. D. 432.

<sup>1</sup> *Acta synodalia*, &c. *scripturae sacre et canonice translationes, interpretum, &c.* Eregida, t. i. c. 7. The original letter in the Synodicon is, 10, 14, 24, 25; justify the appearance of a voluntary resignation, which is asserted by Euseb. Jac. a Nestorian writer, apud Asseman, *Biblioth. orientalis*, tom. iii. p. 206, 207.

<sup>2</sup> See the imperial letter in the *Acta of the Synod of Ephesus*, (Asseman, tom. ii. p. 1725-1726). The edict names of Yennasius, which was affixed to the disciples of this heretical Monarchian, was designed to exclude *ἐκκλησιαστικὸν καὶ ὁμολογῶντα τὴν εὐαγγέλιον καὶ ἀποστολὴν*, *καὶ πᾶσι δόγμασι καὶ νόμοις τοῦ κυρίου καὶ σωτῆρος ἡμῶν Ἰησοῦ χριστοῦ*. Yet these were Christians who differed only in name and in shadows.

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.....

condemned his writings to the flames, and banished his person first to Petru in Arabia, and at length to Oasis, one of the *islands* of the Libyan desert.\* Secluded from the church and from the world, the exile was still pursued by the rage of bigotry and war. A wandering tribe of the Blemmyes or Nubians invaded his solitary prison; in their retreat they dismissed a crowd of useless captives; but no sooner had Nestorius reached the banks of the Nile, than he would gladly have escaped from a Roman and orthodox city to the milder servitude of the savages. His flight was punished as a new crime: the soul of the patriarch inspired the civil and ecclesiastical powers of Egypt; the magistrates, the soldiers, the monks, devoutly tortured the enemy of Christ and St. Cyril; and, as far as the confines of Æthiopia, the heretic was alternately dragged and recalled, till his aged body was broken by the hardships and accidents of these reiterated journeys. Yet his mind was still independent and erect; the president of Thebais was awed by his pastoral letters; he survived the catholic tyrant of Alexandria, and, after sixteen years banishment, the synod of Chalcedon would perhaps have restored him to the honours, or at least to the

\* The metaphor of islands is applied by the grave civilians (Pondect. l. xlviii, bk. 22, cap. 7) to those happy spots which are discriminated by water and rocks from the Libyan sands. Three of these under the common name of Oasis, or *Atrahat*—1. The temple of Jupiter Amon. 2. The middle town, three days journey to the west of Sympolis. 3. The southern, where Nestorius was banished, in the 2nd clement, and only three days journey from the confines of Nubia. See a learned Note of Michaelis, (ad Descript. Egypt. Abulhidja, p. 21. 22).

communion of the church. The death of Nestorius prevented his obedience to their welcome summons;<sup>1</sup> and his disease might afford some colour to the scandalous report, that his tongue, the organ of blasphemy, had been eaten by the worms. He was buried in a city of Upper Egypt, known by the names of Chemmis, or Panopolis, or Akmin;<sup>2</sup> but the immortal malice of the Jacobites has persevered for ages to cast stones against his sepulchre, and to propagate the foolish tradition, that it was never watered by the rain of heaven, which equally descends on the righteous and the ungodly.<sup>3</sup> Humanity may drop a tear on the fate of Nestorius: yet justice must observe, that he suffered the persecution which he had approved and inflicted.<sup>4</sup>

The death of the Alexandrian primate, af-

<sup>1</sup> The invitation of Nestorius to the synod of Chalcedon, is related by Zacharius, Bishop of Mytiene, (*Origines*, l. ii. c. 23. *Ancient Ecclesiast. Hist.* tom. ii. p. 35); and the famous Nestus or Chloneus, Bishop of Hierapolis, (*Ancient Ecclesiast. Hist.* tom. ii. p. 35. *Acts*, dated by Eusebius and Asseman, and stoutly maintained by La Caze, (*Præsent. Epistol.* tom. iii. p. 181. &c.). The fact is not impossible: yet it was the interest of the Monophysites to spread the inviolent reports, and Eusebius (*tom. ii. p. 177*) affirms, that Nestorius died after an exile of seven years, and consequently the years before the synod of Chalcedon.

<sup>2</sup> Consult of Arvile, (*Mémoires sur l'Égypte*, p. 183); Puvion, (*Description of the State*, vol. i. p. 107); Abulhala, (*Description Égypt.* p. 14), and his commentator Michælis, (*Not.* p. 78-87), and the Arabian Geographers, (p. 42), who mentions, in the sixth century, the ruins and the ruins of Akmin.

<sup>3</sup> Eusebius, (*Origines* tom. ii. p. 177), and Gregory Bar-Hebraeus, or Abulpharagius, (*Ancient*, tom. ii. p. 316), represent the credulity of the sixth and seventh centuries.

<sup>4</sup> We are obliged to Eusebius O. i. c. 73 for some extracts from the letters of Nestorius; but the lively picture of his sufferings is treated with insult by the first and stupid fanatic.

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XLVIII.  
HERESY OF  
EUTYCHES,  
A. D. 448.

For a reign of thirty-two years, abandoned the catholics to the intemperance of zeal, and the abuse of victory.\* The *monophysite* doctrine (one incarnate nature) was rigorously preached in the churches of Egypt and the monasteries of the East; the primitive creed of Apollinaris was protected by the sanctity of Cyril; and the name of Eutyches, his venerable friend, has been applied to the sect most adverse to the Syrian heresy of Nestorius. His rival Eutyches was the abbot, or archimandrite, or superior of three hundred monks; but the opinions of a simple and illiterate recluse might have expired in the cell, where he had slept above seventy years, if the resentment or indiscretion of Flavian, the Byzantine pontiff, had not exposed the scandal to the eyes of the Christian world. His domestic synod was instantly convened, their proceedings were sullied with clamour and artifice, and the aged heretic was surpris'd into a seeming confession, that Christ had not derived his body from the substance of the Virgin Mary. From their partial decree, Eutyches appealed to a general council: and his cause was vigorously asserted by his godson Chrysostom, the reigning counsellor of the palace, and his accomplice Dioscorus, who had

\* His Epistolum cum cunctis, sustinente et effectu, ne Nestorianismus at Monophysitismus, inter se, in medium circumferretur, adeoque rectum pateret, ut aliquis, . . . . Nestorius modo maxime recedat. The learned but partial Zoldani did not always speak the whole truth. Cum Cyrillus in hac similis exi. quam si legimus aut cum alibi rei hujus recte placet et equis rectis, nihil turbos periculis privatis concernit. (Dissert. Epistol. La Græce, tom. 3, p. 121. 122.) as usual. See Key to his observations on the Nestorian controversy.

succeeded to the throne, the greed, the talents, and the vices of the nephew of Theophilus. By the special summons of Theodosius, the second synod of Ephesus was judiciously composed of ten metropolitans and ten bishops from each of the six dioceses of the eastern empire: some exceptions of favour or merit enlarged the number to one hundred and thirty-five; and the Syrian Barsumas, as the chief and representative of the monks, was invited to sit and vote with the successors of the apostles. But the despotism of the Alexandrian patriarch again oppressed the freedom of debate: the same spiritual and carnal weapons were again drawn from the arsenals of Egypt; the Asiatic veterans, a band of archers, served under the orders of Dioscorus; and the more formidable monks, whose minds were inaccessible to reason or mercy, besieged the doors of the cathedral. The general, and, as it should seem, the unconstrained voice of the fathers, accepted the faith and even the anathemas of Cyril; and the heresy of the two natures was formally condemned in the persons and writings of the most learned Orientals. "May those who divide Christ, be divided with the sword, may they be hewn in pieces, may they be burnt alive!" were the charitable wishes of a Christian synod.\* The innocence and sanctity of

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Second  
council of  
Ephesus,  
A. D. 449,  
Aug. 5-11.

\* *Ὁ ἅγιος πᾶσις συνέκληται, καὶ ἐκείνους ἐκρίναν, καὶ ἐκείνους ἀπέκρινεν, καὶ ἐκείνους ἀπέκρινεν. At the request of Dioscorus, those who were unable to rest, stood, stretched out their hands. At Chalcedon, the Orientals disclaimed these excommunications; but the Egyptians most resolutely declared them valid. *ἐκείνους καὶ ἐκείνους ἀπέκρινεν* (Council, torn. iv, p. 1012).*





place of his exile, expired on the third day, of the wounds and bruises which he had received at Ephesus. This second synod has been justly branded as a gang of robbers and assassins; yet the accusers of Dioscorus would magnify his violence, to alleviate the cowardice and inconsistency of their own behaviour.

The faith of Egypt had prevailed: but the vanquished party was supported by the same pope who encountered without fear the hostile rage of Attila and Genseric. The theology of Leo, his famous  *Tome*  or epistle on the mystery of the incarnation, had been disregarded by the synod of Ephesus: his authority, and that of the Latin church, was insulted in his legates, who escaped from slavery and death to relate the melancholy tale of the tyranny of Dioscorus and the martyrdom of Flavian. His provincial synod annulled the irregular proceedings of Ephesus; but as this step was itself irregular, he solicited the convocation of a general council in the free and orthodox provinces of Italy. From his independent throne, the Roman bishop spoke and acted without danger, as the head of the Christians, and his dictates were obsequiously transcribed by Placidia and her son Valentinian; who addressed their eastern colleague to restore the peace and unity of the church. But the pageant of oriental royalty was moved with equal dexterity by the hand of the eunuch; and Theodosius could pronounce, without hesitation, that the church was already peaceful and triumphant, and that the recent flame had been extinguished by the just punishment of the Nestorians. Per-

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Council of  
Chalcedon,  
A. D. 451.  
Oct. 8-  
Nov. 1.

ERASE  
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haps the Greeks would be still involved in the heresy of the Monophysites, if the emperor's horse had not fortunately stumbled; Theodosius expired, his orthodox sister, Pulcheria, with a nominal husband, succeeded to the throne; Chrysostom was burnt, Dioscorus was disgraced, the exiles were recalled, and the *nome* of Leo was subscribed by the oriental bishops. Yet the pope was disappointed in his favourite project of a Latin council: he declined to preside in the Greek synod, which was speedily assembled at Nice in Bithynia; his legates required in a peremptory tone the presence of the emperor: and the weary fathers were transported to Chalcedon under the immediate eye of Marcian and the senate of Constantinople. A quarter of a mile from the Thracian Bosphorus, the church of St. Euphemius was built on the summit of a gentle though lofty ascent: the triple structure was celebrated as a prodigy of art, and the boundless prospect of the land and sea might have raised the mind of a sectary to the contemplation of the God of the universe. Six hundred and thirty bishops were ranged in order in the nave of the church; but the patriarchs of the East were preceded by the legates, of whom the third was a simple priest; and the place of honour was reserved for twenty laymen of consular or senatorian rank. The gospel was ostentatiously displayed in the centre, but the rule of faith was defined by the papal and imperial ministers, who moderated the thirteen sessions of the council of Chalcedon.\*

\* The Acts of the Council of Chalcedon. (Grenet, tom. iv, p. 144-227) compared those of Ephesus, pp. 392-5199, which again compare

Their partial interposition silenced the intemperate shouts and execrations, which degraded the episcopal gravity : but, on the formal accusation of the legates, Dioscorus was compelled to descend from his throne to the rank of a criminal, already condemned in the opinion of his judges. The Orientals, less adverse to Nestorius than to Cyril, accepted the Romans as their deliverers : Thrace, and Pontus, and Asia, were exasperated against the murderer of Flavian, and the new patriarchs of Constantinople and Antioch secured their places by the sacrifice of their benefactor. The bishops of Palestine, Macedonia, and Greece, were attached to the faith of Cyril ; but in the face of the synod, in the heat of the battle, the leaders, with their obsequious train, passed from the right to the left wing, and decided the victory by this seasonable desertion. Of the seventeen suffragans who sailed from Alexandria, four were tempted from their allegiance, and the thirteen, falling prostrate on the ground, implored the mercy of the council, with sighs and tears, and a pathetic declaration, that, if they yielded, they should be massacred, on their return to Egypt, by the indignant people. A tardy repentance was allowed to expiate the guilt or error of the accomplices of Dioscorus : but their

price the synod of Constantinople under Flavian, (p. 575-597) : and it requires some attention to disengage this double revolution. The whole business of Eutyches, Flavian, and Dioscorus, is related by Eusebius (l. i. c. 9-13, and l. ii. c. 1, 2, 3, 4) and Liberatus, (Brev. c. 11, 12, 13, 14). Once more, and almost for the first time, I appeal to the diligence of Tillemont, (*Mém. Ecclésiast.* tom. xv, p. 475-519). The annals of Baronius and Pagi will accompany me much farther on my long and laborious journey.

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sins were accumulated on his head: he neither asked nor hoped for pardon, and the moderation of those who pleaded for a general amnesty, was drowned in the prevailing cry of victory and revenge. To save the reputation of his late adherents, some *personal* offences were skilfully detected: his rash and illegal excommunication of the pope, and his contumacious refusal (while he was detained a prisoner) to attend the summons of the synod. Witnesses were introduced to prove the special facts of his pride, avarice, and cruelty; and the fathers heard with abhorrence, that the alms of the church were lavished on the female dancers, that his palace, and even his bath, was open to the prostitutes of Alexandria, and that the infamous Pansophia, or Irene, was publicly entertained as the concubine of the patriarch.

Faith of  
Chalcedon.

For these scandalous offences Dioscorus was deposed by the synod, and banished by the emperor; but the purity of his faith was declared in the presence, and with the tacit approbation, of the fathers. Their prudence supposed rather

\* *Μακρὸν ἔργον ἐστὶν ἡ ἀποκατάστασις τοῦ πατριάρχου* (perhaps *Εὐγενίου*), *ὡς ἐκ τῆς ἐκκλησιαστικῆς καὶ ἀποστολικῆς ἐξουσίας* (perhaps *ἐκ τῆς ἐκκλησιαστικῆς καὶ ἀποστολικῆς ἐξουσίας*), (Gualt. tom. iv, p. 1270). A specimen of the wit and malice of the people is preserved in the Greek Anthology, vi. 10, n. 3, p. 188, edit. Weichert, although the application was unknown to the editor Strabonius. The nameless epigrammatist takes a tolerable pun, by confounding the episcopal salutation of "Peace be to all!" with the genuine or corrupted name of the bishop's concubine—

*Εὐγενίου μακρὸν ἔργον ἐστὶν ἡ ἀποκατάστασις*

*ἡ δὲ θύρατος οὐκ ἐστὶν ἡ ἀποκατάστασις*

I am ignorant whether the patriarch, who seems to have been a jealous lover, is the Chion of a preceding epigram, whose wife *εὐγενία* was viewed with envy and wonder by *Πρίσιπος ὁ βασιλεὺς*.



than pronounced the heresy of Eutyches, who was never summoned before their tribunal; and they sat silent and abashed, when a bold Monophysite, casting at their feet a volume of Cyril, challenged them to anathematize in his person the doctrine of the saint. If we fairly peruse the acts of Chalcedon as they are recorded by the orthodox party,\* we shall find that a great majority of the bishops embraced the simple unity of Christ; and the ambiguous concession, that he was formed *or* *from* two natures, might imply either their previous existence, or their subsequent confusion, or some dangerous interval between the conception of the man and the assumption of the God. The Roman theology, more positive and precise, adopted the term most offensive to the ears of the Egyptians, that Christ existed in two natures: and this momentous particle<sup>b</sup> (which the memory, rather than the understanding, must retain) had almost produced a

\* Those who asseverate the infallibility of synods, may try to strengthen their sense. The leading bishops were attended by partial or careless scribes, who dispersed their copies round the world. Our Greek MSS. are riddled with the false and profane reading of *ex una persona*, (Council. act. iii. p. 1460). The authentic translation of Pope Leo I. does not seem to have been corrected; and the old Latin version materially differs from the present vulgate, which was revised (A. D. 550) by Basilius, a Roman priest. (See the best MSS. of the *Acta* of the Council of Constantinople, (Duncker, C. P. Christiana, l. vi. p. 131), a famous monastery of Latins, Greeks, and Syrians. See Council. tom. ix. p. 1929-2049, and Page, *Collat.* tom. ii. p. 224, &c.)

<sup>b</sup> It is starkly represented in the manuscript of Petasius, tom. v. l. iii. c. 871 yet the subtle theologian is himself shrewd—or quite (sometimes, supererogationem, et nonnullas partes hypostasium vocabulum iniquissimum) ex ab homini theologia gratiam alienam (p. 124).

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schism among the catholic bishops. The tome of Leo had been respectfully, perhaps sincerely, subscribed: but they protested, in two successive debates, that it was neither expedient nor lawful to transgress the sacred landmarks which had been fixed at Nice, Constantinople, and Ephesus, according to the rule of scripture and tradition. At length they yielded to the importunities of their masters, but their infallible decree, after it had been ratified with deliberate votes and vehement acclamations, was overturned in the next session by the opposition of the legates and their oriental friends. It was in vain that a multitude of episcopal voices repeated in chorus, "The definition of the fathers is orthodox and immutable! The heretics are now discovered! Anathema to the Nestorians! Let them depart from the synod! Let them repair to Rome!" The legates threatened, the emperor was absolute, and a committee of eighteen bishops prepared a new decree, which was imposed on the reluctant assembly. In the name of the fourth general council, the Christ in one person, but in two natures, was announced to the catholic world: an invisible line was drawn between the heresy of Apollinaris and the faith of St. Cyril; and the road to paradise, a bridge as sharp as a razor, was suspended over the abyss by the master-hand of the theological artist. During

\* *Libertus & i ipsi ageretur & congregata . . . & concilioque Imperatorum . . . & concilioque Narbonensi . . . & concilioque in Episcopo Narbonensi* (Council. tom. iv, p. 1449). Eusebius and Liberatus present only the placid face of the synod, and discreetly slide over those ambers supposing things distant.

ten centuries of blindness and servitude, Europe received her religious opinions from the oracle of the Vatican; and the same doctrine, already varnished with the rust of antiquity, was admitted without dispute into the creed of the reformers, who disclaimed the supremacy of the Roman pontiff. The synod of Chalcedon still triumphs in the protestant churches; but the ferment of controversy has subsided, and the most pious Christians of the present day are ignorant or careless of their own belief concerning the mystery of the incarnation.

Far different was the temper of the Greeks and Egyptians under the orthodox reigns of Leo and Marcian. Those pious emperors enforced with arms and edicts the symbol of their faith;<sup>a</sup> and it was declared by the conscience or honour of five hundred bishops, that the decrees of the synod of Chalcedon might be lawfully supported, even with blood. The catholics observed with satisfaction, that the same synod was odious both to the Nestorians and the Monophysites;<sup>b</sup> but the Nestorians

Discord of  
the East.  
A. D. 431-  
487.

<sup>a</sup> See in the Appendix to the Acts of Chalcedon, the condemnation of the synod by Marcian, (Cancell. tom. IV. p. 1781, 1785); his letters to the monks of Alexandria, (p. 1791), of Mount Sinai, (p. 1793), of Jerusalem and Palestine, (p. 1798); his laws against the Eutychians, (p. 1809, 1811, 1813); the correspondence of Leo with the provincial synods on the revolution of Alexandria, (p. 1838, 1939).

<sup>b</sup> Pinetore (or rather Eutocius of Alexandria) continues, in a few passages, the species colour of this double charge against Pope Leo and his synod of Chalcedon, (Biblioth. eccl. xxv. p. 768). He waged a double war against the enemies of the church, and wounded either not with the darts of his laboratory—*causticis dolo ut noceret*, *crepans*. Against Nestorius he seemed to introduce the *regimen* of the Monophysites; against Eutychus he appeared to countenance the

were less angry, or less powerful; and the East was distracted by the obstinate and sanguinary zeal of the Monophysites. Jerusalem was occupied by an army of monks; in the name of the one incarnate nature, they pillaged, they burnt, they murdered; the sepulchre of Christ was defiled with blood; and the gates of the city were guarded in tumultuous rebellion against the troops of the emperor. After the disgrace and exile of Dioscorus, the Egyptians still regretted their spiritual father; and detested the usurpation of his successor, who was introduced by the fathers of Chalcedon. The throne of Proterius was supported by a guard of two thousand soldiers; he waged a five years war against the people of Alexandria; and on the first intelligence of the death of Marcian, he became the victim of their zeal. On the third day before the festival of Easter, the patriarch was besieged in the cathedral, and murdered in the baptistery. The remains of his mangled corpse were delivered to the flames, and his ashes to the wind: and the deed was inspired by the vision of a pretended angel: an ambitious monk, who, under the name of Timothy the Cat,\* succeeded to the place and opinions of Dioscorus. This deadly superstition was inflamed, on either side, by the principle and

several legends of the Nestorians. The apologist shows a remarkable interpretation for the words of the same but been extended to the heretics, the word of the controversy would have been lost in the air.

\* *Adams*, from his doctrinal expeditions. In darkness and disguise he kept round the walls of the monastery, and whispered the poison into the ears of his listening brethren. (Theodor. Lector, &c.)

the practice of retaliation: in the pursuit of a metaphysical quarrel, many thousands\* were slain, and the Christians of every degree were deprived of the substantial enjoyments of social life, and of the invisible gifts of baptism and the holy communion. Perhaps an extravagant fable of the times may conceal an allegorical picture of these fanatics, who tortured each other, and themselves. "Under the consulship of Vennutius and Celer," says a grave bishop, "the people of Alexandria, and all Egypt, were seized with a strange and diabolical frenzy: great and small, slaves and freedmen, monks and clergy, the natives of the land, who opposed the synod of Chalcedon, lost their speech and reason, barked like dogs, and tore, with their own teeth, the flesh from their hands and arms."<sup>b</sup>

The disorders of thirty years at length produced the famous *HENOTICON*<sup>c</sup> of the emperor Zeno, which in his reign, and in that of Anastasius, was signed by all the bishops of the East, under the penalty of degradation and exile, if they rejected or infringed this salutary and fundamental law. The clergy may smile or groan

The Henoticon of Zeno,  
A. D. 482.

\* *Quia in ecclesiis nostris, a multis Christi persecutores per pietatem esse esse ut: necesse est esse.* Such is the hyperbolic language of the Henoticon.

<sup>b</sup> See the Chronicle of Victor Tournemont, in the *Lectiones Antiquæ* of Canisius, republished by Bamaga, tom. i, p. 325.

<sup>c</sup> The Henoticon is transcribed by Evagrius, *O. M.* c. 13), and translated by Liberatus, *Istec.* c. 18). Pagi (*Critica*, tom. ii, p. 414) and Asseman (*Biblioth. Orient.* tom. i, p. 343) are satisfied that it is very false history; but Petavius (*Dogmat. Theolog.* tom. vi, l. i, c. 15, p. 40) most unaccountably asserts *Chalcedonensis auctor*. An adversary would prove that he had never read the Henoticon.



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at the presumption of a layman who defines the articles of faith; yet if he stoops to the humiliating task, his mind is less infected by prejudice or interest, and the authority of the magistrate can only be maintained by the concord of the people. It is in ecclesiastical story, that Zeno appears least contemptible; and I am not able to discern any Manichaean or Eutychian guilt in the generous saying of Anastasius, that it was unworthy of an emperor to persecute the worshippers of Christ and the citizens of Rome. The Henoticon was most pleasing to the Egyptians; yet the smallest blemish has not been described by the jealous, and even jaundiced, eyes of our orthodox schoolmen, and it accurately represents the catholic faith of the incarnation, without adopting or disclaiming the peculiar terms or tenets of the hostile sects. A solemn anathema is pronounced against Nestorius and Eutyches; against all heretics by whom Christ is divided, or confounded, or reduced to a phantom. Without defining the number or the article of the word *nature*, the pure system of St. Cyril, the faith of Nice, Constantinople, and Ephesus, is respectfully confirmed; but, instead of bowing at the name of the fourth council, the subject is dismissed by the censure of all contrary doctrines, if any such have been taught either elsewhere or at Chalcedon. Under this ambiguous expression, the friends and the enemies of the last synod might unite in a silent embrace. The most reasonable Christians acquiesced in this mode of toleration; but their

reason was feeble and inconstant, and their obedience was despised as timid and servile by the vehement spirit of their brethren. On a subject which engrossed the thoughts and discourses of men, it was difficult to preserve an exact neutrality; a book, a sermon, a prayer, rekindled the flame of controversy; and the bonds of communion were alternately broken and renewed by the private animosity of the bishops. The space between Nestorius and Eutyches was filled by a thousand shades of language and opinion; the *acephali*<sup>a</sup> of Egypt, and the Roman pontiffs, of equal valour, though of unequal strength, may be found at the two extremities of the theological scale. The *acephali*, without a king or a bishop, were separated above three hundred years from the patriarchs of Alexandria, who had accepted the communion of Constantinople, without exacting a formal condemnation of the synod of Chalcedon. For accepting the communion of Alexandria, without a formal approbation of the same synod, the patriarchs of Constantinople were anathematized by the popes. Their inflexible despotism involved the most orthodox of the Greek churches in this spiritual contagion, denied or doubted the validity of their sacraments, and fomented, thirty-five years, the

<sup>a</sup> See Renaudot, (Hist. Patriarch. Alex. p. 123, 131, 143, 195, 247). They were reconciled by the care of Mark I. (A.D. 799-819); he presented their chiefs to the patriarchs of Antioch and Tella, (perhaps Tars; see d'Anville, p. 87), and supplied the sacraments, which had failed for want of an episcopal ordination.

<sup>b</sup> De his quæ baptizant, quæ ordinant Aegyptii, majorum traditione confectam et veram, præcipue religionis sanctissimam congruam præbentis sine differentie medicinam, Anastasius, in epist. I. ad Euphemium,

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schem of the East and West, till they finally abolished the memory of four Byzantine pontiffs, who had dared to oppose the supremacy of St. Peter.<sup>1</sup> Before that period, the precarious trace of Constantinople and Egypt had been violated by the zeal of the rival prelates. Macedonius, who was suspected of the Nestorian heresy, asserted, in disgrace and exile, the synod of Chalcedon, while the successor of Cyril would have purchased its overthrow with a bribe of two thousand pounds of gold.

The Trisagion and religious war till the death of Anastasius.  
A. D. 508.  
318.

In the fever of the times, the sense, or rather the sound, of a syllable, was sufficient to disturb the peace of an empire. The TRISAGION,<sup>2</sup> (thrice holy), "Holy, holy, holy, Lord God of Hosts!" is supposed, by the Greeks, to be the identical hymn which the angels and cherubim eternally repeat before the throne of God, and which, about the middle of the fifth century, was

phemism, *Concil. tom. v. 296*. The cure of a medicine proves the disease, and numbers must have perished, before the arrival of the Roman physician. Tillmann himself (*Mem. Ecclies. tom. xvi. p. 522, 523, &c.*) is shocked at the most unchristianlike temper of the papae: they are now glad, says he, to invoke St. Flavian of Antioch, St. Elias of Jerusalem, &c. to whom they refused communion whilst upon earth. But Cardinal Barozzi is firm and hard as the rock of St. Peter.

<sup>1</sup> Their names were erased from the diptych of the church: ex venerabili diptycho, in quo per immutabile transactionum ad eandem habitationem consequentium vocantur, remouentur, (*Concil. tom. iv. p. 1848*). This ecclesiastical record was therefore equivalent to the book of life.

<sup>2</sup> Pelagius (*Dogmat. Theolog. tom. v. l. 1. c. 2, 3, 4, p. 217-220*), and Tillmann (*Mem. Ecclies. tom. xvi. p. 713, Art. 179*) repeated the history and doctrine of the Trisagion. In the twelve centuries between Isidore and St. Flavian's day, who was taken up into heaven before the bishop and people of Constantinople, the song was considerably improved. The boy heard the angels sing "Holy God! Holy! strong! Holy (innocent)!"

miraculously revealed to the church of Constantinople. The devotion of Antioch soon added, "who was crucified for us;" and this grateful address, either to Christ alone, or to the whole Trinity, may be justified by the rules of theology, and has been gradually adopted by the catholics of the East and West. But it had been imagined by a Monophysite bishop;\* the gift of an enemy was at first rejected as a dire and dangerous blasphemy, and the rash innovation had nearly cost the emperor Anastasius his throne and his life.† The people of Constantinople was devoid of any rational principles of freedom; but they held, as a lawful cause of rebellion, the colour of a livery in the races, or the colour of a mystery in the schools. The Trisagion, with and without this obnoxious addition, was chanted in the cathedral by two adverse choirs, and, when their lungs was exhausted, they had recourse to the more solid arguments of sticks and stones: the aggressors were punished by the emperor, and defended by the patriarch; and the crown and mitre were staked on the event of this momentous quarrel. The streets were instantly crowded with innumerable swarms of men, women, and children; the legions of monks, in regular array, marched, and shouted, and

\* Peter Geoptrios, the fellow, or trade, which he had exercised in the tannery, patriarch of Antioch. His tedious story is discussed in the *Annals of Pagi*, (A. D. 471-480), and a dissertation of M. de Vaulx at the end of his *Evangelion*.

† The troubles under the reign of Anastasius must be gathered from the chronicles of Victor, Marcellinus, and Theophanes. As the last was not published in the reign of Basilus, the critic Pagi is more copious, as well as more correct.



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fought at their head,—“Christians! this is the day of martyrdom; let us not desert our spiritual father; anathema to the Manichean tyrant; he is unworthy to reign.” Such was the catholic cry; and the galleys of Anastasius lay upon their oars before the palace, till the patriarch had pardoned his penitent, and hushed the waves of the troubled multitude. The triumph of Macedonius was checked by a speedy exile; but the zeal of his flock was again exasperated by the same question,—“Whether one of the Trinity had been crucified?” On this momentous occasion, the blue and green factions of Constantinople suspended their discord, and the civil and military powers were annihilated in their presence. The keys of the city, and the standards of the guards, were deposited in the forum of Constantine, the principal station and camp of the faithful. Day and night they were incessantly busied either in singing hymns to the honour of their God, or in pillaging and murdering the servants of their prince. The head of his favourite monk, the friend, as they styled him, of the enemy of the Holy Trinity, was borne aloft on a spear; and the fire-brands, which had been darted against heretical structures, diffused the undistinguishing flames over the most orthodox buildings. The statues of the emperor were broken, and his person was concealed in a suburb, till, at the end of three days, he dared to implore the mercy of his subjects. Without his diadem, and in the posture of a suppliant, Anastasius appeared on the throne of the circus. The catholics, before his face, rehearsed their genuine Triso-



gion; they exulted in the offer which he proclaimed by the voice of a herald, of abdicating the purple; they listened to the admonition, that since *all* could not reign, they should previously agree in the choice of a sovereign; and they accepted the blood of two unpopular ministers, whom their master, without hesitation, condemned to the lions. These furious but transient seditions were encouraged by the success of Vitalian, who, with an army of Huns and Bulgarians, for the most part idolaters, declared himself the champion of the catholic faith. In this pious rebellion he depopulated Thrace, besieged Constantinople, exterminated sixty-five thousand of his fellow Christians, till he obtained the recall of the bishops, the satisfaction of the pope, and the establishment of the council of Chalcedon, an orthodox treaty, reluctantly signed by the dying Anastasius, and more faithfully performed by the uncle of Justinian. And such was the event of the *first* of the religious wars, which have been waged in the name, and by the disciples, of the God of Peace.\*

First religious war.  
A. D. 448.

Justinian has been already seen in the various light of a prince, a conqueror, and a lawgiver:

Theological character and

\* The general history, from the council of Chalcedon to the death of Anastasius, may be found in the *Breviary of Liberatus*, (c. 18-19), the 1st and 2d books of *Evegraphus*, the *Abstract* of the two books of *Theodore the Reader*, the *Acts of the Synods*, and the *Epistles of the Popes*, (Concil. tom. v). The series is continued with some disorder in the 4th and 5th volumes of the *Memoires Ecclesiastiques* of Tillamont. And here I must take leave for ever of that immortal guide—whose sagacity is overbalanced by the merits of candour, diligence, veracity, and scrupulous minutiae. He was prevented by death from completing, as he designed, the 11th century of the church and empire.

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gov-  
ern-  
ment of  
Justinian,  
A. D. 529-  
565.

the theologian<sup>1</sup> still remains; and it affords an unfavourable prejudice, that his theology should form a very prominent feature of his portrait. The sovereign sympathised with his subjects in their superstitious reverence for living and departed saints; his code, and more especially his novels, confirm and enlarge the privileges of the clergy; and in every dispute between a monk and a layman, the partial judge was inclined to pronounce, that truth, and innocence, and justice, were always on the side of the church. In his public and private devotions, the emperor was assiduous and exemplary; his prayers, vigils, and fasts, displayed the austere penance of a monk; his fancy was amused by the hope, or belief, of personal inspiration; he had secured the patronage of the Virgin and St. Michael the archangel; and his recovery from a dangerous disease was ascribed to the miraculous succour of the holy martyrs Cosmas and Damian. The capital and the provinces of the East were decorated with the monuments of his religion;<sup>2</sup> and, though the far greater part of these costly structures may be attributed to his taste or ostentation, the zeal of the royal architect was probably quickened by a genuine sense of love and gratitude towards his invisible benefactors. Among

<sup>1</sup> The strain of the *Anecdotes of Procopius*, &c. 11, 12, 18, 47, 280, with the injured remarks of Alcamarius, is confirmed, rather than contradicted, by the Acts of the Councils, the fourth book of Eusebius, and the complaints of the African Firmicus in his sixth book—*doctrina supposita*, “*cum videt doctus appetit imperturum*,” &c. *spiritus*, “*sens questionibus ecclesiarum turbat*.” See *Procop. de B. G. Goth.* l. 10, c. 33.

<sup>2</sup> *Procop. de Edificiis*, l. 1, c. 6, 7, &c. *passim*.

the titles of imperial greatness, the name of *Pious* was most pleasing to his ear; to promote the temporal and spiritual interest of the church, was the serious business of his life; and the duty of father of his country was often sacrificed to that of defender of the faith. The controversies of the times were congenial to his temper and understanding; and the theological professors must inwardly deride the diligence of a stranger, who cultivated their art and neglected his own. "What can ye fear," said a bold conspirator to his associates, "from your bigoted tyrant?" Sleepless and unarmed he sits whole nights in his closet, debating with reverend grey-beards, and turning over the pages of ecclesiastical volumes.\* The fruits of these lucubrations were displayed in many a conference, where Justinian might shine as the loudest and most subtle of the disputants, in many a sermon, which, under the name of edicts and epistles, proclaimed to the empire the theology of their master. While the barbarians invaded the provinces, while the victorious legions marched under the banners of Belisarius and Narses, the successor of Trajan, unknown to the camp, was content to vanquish at the head of a synod. Had he invited to these synods a disinterested and rational spectator, Justinian might have learned, "that religious controversy is the offspring of

<sup>1</sup> The *St. catharinae* character is not rare among some large fishes, but is never found together with the *Stegastes* shape of the spine. Prof. de Bell. Gatt. t. III. c. 37. In the life of *St. biocellatus*, (opus Salaman, ad Prof. Arcan. r. 18), the same character is given with a design to render justifiable.

CHAP. "arrogance and folly; *that* true piety is most  
 XLVII. "laudably expressed by silence and submission;  
 "that man, ignorant of his own nature, should  
 "not presume to scrutinize the nature of his  
 "God; and *that* it is sufficient for us to know,  
 "that power and benevolence are the perfect  
 "attributes of the Deity."

His perse-  
 cution

Toleration was not the virtue of the times, and indulgence to rebels has seldom been the virtue of princes. But when the prince descends to the narrow and peevish character of a disputant, he is easily provoked to supply the defect of argument by the plenitude of power, and to chastise without mercy the perverse blindness of those who wilfully shut their eyes against the light of demonstration. The reign of Justinian was an uniform yet various scene of persecution: and he appears to have surpassed his indolent predecessors, both in the contrivance of his laws and the rigour of their execution. The insufficient term of three months was assigned for the conversion or exile of all heretics;\* and if he still connived at their precarious stay, they were deprived, under his iron yoke, not

of here-  
 tics.

\* For those who and moderate sentiments, Procopius (de Bell. Goth. l. i. c. 3) is scourged in the preface of Anastasius, who registers among the political Christians—and huge veritas hæresum ostentum unum, per omnes Athanasius, et alios—who predicted the imitation of God's mercy to man, (see Hist. Arcan. p. 12).

\* This alternative, a precious circumstance, is observed by John Malala, (scen. li. p. 63, edit. Venet. 1733), who deserves more credit as he draws towards his end. After numbering the heretics, Nestorius, Eutychians, &c. he exprobrat, says Justinian, ut digni vellent judicantur: jubentur, nisi ut . . . convicti et apertis hæresibus inter eos liberos animadversant subjugantur. Baronius copies and applauds this edit of the Code, (C. D. 327, N. 35, 40).



only of the benefits of society, but of the common birth-right of men and Christians. At the end of four hundred years, the Montanists of Phrygia<sup>a</sup> still breathed the wild enthusiasm of perfection and prophecy, which they had imbibed from their male and female apostles, the special organs of the Paraclete. On the approach of the catholic priests and soldiers, they grasped with alacrity the crown of martyrdom; the conventicle and the congregation perished in the flames, but these primitive fanatics were not extinguished three hundred years after the death of their tyrant. Under the protection of the Gothic confederates, the church of the Arians at Constantinople had braved the severity of the laws; their clergy equalled the wealth and magnificence of the senate; and the gold and silver which were seized by the rapacious hand of Justinian might perhaps be claimed as the spoils of the provinces and the trophies of the barbarians. A secret remnant of pagans, who still lurked in the most refined and the most rustic conditions of mankind, excited the indignation of the Christians, who were perhaps unwilling that any strangers should be the witnesses of their intestine quarrels. A bishop was named as the inquisitor of the faith, and his diligence soon discovered in the court and city, the magistrates, lawyers, physicians, and sophists, who still cherished the superstition of the Greeks. They were sternly informed that they must choose without delay between the displeasure

<sup>a</sup> See the character and principles of the Montanists, in Moshelm. *De Belis. Cels. ante Constantinum*, p. 410-414.



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of Jupiter or Justinian, and that their aversion to the gospel could no longer be disguised under the scandalous mask of indifference or impiety. The patrician Plotius perhaps alone was resolved to live and to die like his ancestors: he enfranchised himself with the stroke of a dagger, and left his tyrant the poor consolation of exposing with ignominy the lifeless corpse of the fugitive. His weaker brethren submitted to their earthly monarch, underwent the ceremony of baptism, and laboured, by their extraordinary zeal, to erase the suspicion, or to expiate the guilt, of idolatry. The native country of Homer, and the theatre of the Trojan war, still retained the last sparks of his mythology: by the care of the same bishop, seventy thousand pagans were detected and converted in Asia, Phrygia, Lydia, and Caria; ninety-six churches were built for the new proselytes; and linen vestments, bibles, and liturgies, and vases of gold and silver, were supplied by the pious munificence of Justinian! The Jews, who had been gradually stripped of their immunities, were oppressed by a vexatious law, which compelled them to observe the festival of Easter the same day on which it was celebrated by the Christians.\* And they might

\* Theophanes Chron. p. 143. John de Mergopole bishop of Asia, is a more authentic witness of this transaction, in which he was himself employed by the emperor. (Asseman. Bib. Orient. t. ii. p. 85.)

\* Compare Theophanes (Hist. Anac. v. 28, and Abbot's Notes) with Theophanes. (Chron. p. 180.) The council of Nice has interest, as the patriarch, or rather the metropolitan, of Alexandria, with the assembly proclamation of Easter; and we still read, or rather we do not read, many of the Paschal epistles of St. Cyril. Since the council

—phrygia

complain with the more reason, since the catholics themselves did not agree with the astronomical calculations of their sovereign: the people of Constantinople delayed the beginning of their Lent a whole week after it had been ordained by authority: and they had the pleasure of fasting seven days, while meat was exposed for sale by the command of the emperor. The Samaritans of Palestine\* were a motley race, an ambiguous sect, rejected as Jews by the pagans, by the Jews as schismatics, and by the Christians as idolaters. The abomination of the cross had already been planted on their holy mount of Garizim,<sup>†</sup> but the persecution of Justinian offered only the alternative of baptism or rebellion. They chose the latter: under the standard of a desperate leader, they rose in arms, and retaliated their wrongs on the lives, the property, and the temples, of a defenceless people. The Samaritans were finally subdued by the regular forces of the East: twenty thousand were slain; twenty thousand were sold by the Arabs to the infidels of Persia and India, and the remains of that unhappy nation atoned for the crime of treason by the sin of hypocrisy. It has been com-

of Samari-  
tans.

monophism in Egypt, the catholics were perplexed by such a double prejudice as that which we have opposed, among the protestants, the reception of the Gregorian style.

\* For the religion and history of the Samaritans, consult *Samargy, Histoire des Juifs*, a learned and impartial work.

† *Sidonius*, *Kerylos*, *Naples*; the constant and modern seat of the Samaritans, is situated in a valley between the barren *Ebal*, the mountain of warning to the north, the *holy Garizim*, or mountain of carrying to the south, and an elevated tower raised from Jerusalem. See *Wanderings, Journey from Aleppo*, &c. p. 204-61.

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puted that one hundred thousand Roman subjects were extirpated in the Samaritan war, which converted the once fruitful province into a desolate and smoking wilderness. But in the creed of Justinian, the guilt of murder could not be applied to the slaughter of unbelievers; and he piously laboured to establish with fire and sword the unity of the Christian faith.

Wm. W. Phelps  
July.

With these sentiments, it was incumbent on him, at least, to be always in the right. In the first years of his administration, he signalized his zeal as the disciple and patron of orthodoxy: the reconciliation of the Greeks and Latins established the *tame* of St. Leo as the creed of the emperor and the empire; the Nestorians and Eutychians were exposed, on either side, to the double edge of persecution; and the four synods of Nice, Constantinople, Ephesus, and Chalcedon, were ratified by the code of a catholic lawgiver.\* But while Justinian strove to maintain the uniformity of faith and worship, his wife Theodora, whose vices were not incompatible with devotion, had listened to the

\* *Procopius, Anecdota*, 8. 11. Theophrastus Cherson, p. 182. John Malact, *Chronicon*, 11, p. 62. I translate on anacrystion, half pathological, half superstitious, that the plague which had been visited by the dignity of Justinian, was the same through which the Mohammedans introduced into the empire.

\* The expenditure of Priscoville is reimbursable, as far as the State Government is concerned, as far as the State Government is concerned. According to the law, the State Government is responsible for the reimbursement of the expenditure of Priscoville.

\* See the *Chronicle of Victor*, p. 319, and the original version of the laws of Justinian. During the first years of his reign, Basilus himself is in extreme good humour with the subjects, who enjoyed the peace, till he got them into his power.

monophysite teachers; and the open or clandestine enemies of the church revived and multiplied at the smile of their gracious patroness. The capital, the palace, the nuptial bed, were torn by spiritual discord: yet so doubtful was the sincerity of the royal consorts, that their seeming disagreement was imputed by many to a secret and mischievous confederacy against the religion and happiness of their people.\* The famous dispute of the THREE CHAPTERS,<sup>b</sup> which has filled more volumes than it deserves lines, is deeply marked with this subtle and disingenuous spirit. It was now three hundred years since the body of Origen<sup>c</sup> had been eaten by the worms: his soul, of which he held the pre-existence, was in the hands of its Creator, but his writings were eagerly

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XIV.  
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The three  
chapters.  
A. D. 532-  
688.

\* Theophrastus, *Amoeb.* c. 12. Eusebius, *l. vi.* c. 10. If the emperor had never read the secret histories, their poisonous vapours prove at least the general hatred.

<sup>a</sup> On the subject of the three chapters, the originators of the schism seemed at Constantinople equally much misled, though without the knowledge. (Council *lxxx.* c. p. 1-418). The Greek Eusebius is less explicit and correct (B. *lx.* c. 28) than the three editions of *Poluxena*, *Poluxena*, in the *Thesaurus* of the *Thesaurus*, which are most correctly published by *Klamm*, *Liberarius*, in his *Prolegomena*, p. 22, 23, 24, and *Victor Tchernichev* in his *Orthodoxie*, tom. 1, *Antiq. East. Canon*, p. 220-225. The *Libri Pontificis*, or *Anastasia*, or *Virginis*, *Papae*, *Andy* is original *Indian* evidence. The modern reader will derive some information from *Origen* (*Biblioth. Eccles.* tom. 1, p. 188-202) and *Marcellus*, (*Hist. de l'Eglise*, tom. 1, p. 312-343); but the latter is too strongly inclined to depreciate the authority and character of the pope.

<sup>c</sup> Origen had indeed too great a propensity to imitate the errors and opinions of the old philosophers. (*Augustin.* ad *Manich.* in *Contra* *lxxx.* c. p. 326). His moderate opinions were too repugnant to the zeal of the church, and he was fairly guilty of the heresy of *pantheism*.

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perused by the monks of Palestine: In these writings, the piercing eye of Justinian descried more than ten metaphysical errors; and the primitive doctor, in the company of Pythagoras and Plato, was devoted by the clergy to the eternity of hell-fire, which he had presumed to deny. Under the cover of this precedent, a treacherous blow was aimed at the council of Chalcedon. The fathers had listened without impatience to the praise of Theodore of Mopuestia;<sup>4</sup> and their justice or indulgence had restored both Theodoret of Cyrhus, and Ibas of Edessa, to the communion of the church. But the characters of these oriental bishops were tainted with the reproach of heresy; the first had been the master, the two others were the friends, of Nestorius: their most suspicious passages were accused under the title of the *three chapters*; and the condemnation of their memory must involve the honour of a synod, whose name was pronounced with sincere or affected reverence by the catholic world. If these bishops, whether innocent or guilty, were annihilated in the sleep of death, they would not probably be awakened by the clamour, which after an hundred years was raised over their grave. If they were already in the fangs of the demon, their torments could

<sup>4</sup> Barnage (*Origen*, p. 11-14, ad tom. 1. 1809). For the Council of Chalcedon, which was the first and last of Theodore of Mopuestia. If he composed 10,000 volumes, as many errors would be a charitable allowance. In all the subsequent catalogues of heresies, he is named, without his two brethren, as orthodox; and it is the duty of a historian (*Origen*, *Origen*, tom. 1, p. 195-207) to justify the sentence.



neither be aggravated nor assuaged by human industry. If in the company of saints and angels they enjoyed the rewards of piety, they must have smiled at the idle fury of the theological insects who still crawled on the surface of the earth. The foremost of these insects, the emperor of the Romans, darted his sting, and distilled his venom, perhaps without discerning the true motives of Theodora and her ecclesiastical faction. The victims were no longer subject to his power, and the vehement style of his edicts could only proclaim their damnation, and invite the clergy of the East to join in a full chorus of curses and anathemas. The East, with some hesitation, consented to the voice of her sovereign: the fifth general council, of three patriarchs and one hundred and sixty-five bishops, was held at Constantinople; and the authors, as well as the defenders, of the three chapters were separated from the communion of the saints, and solemnly delivered to the prince of darkness. But the Latin churches were more jealous of the honour of Leo and the synod of Chalcedon: and if they had fought as they usually did under the standard of Rome, they might have prevailed in the cause of reason and humanity. But their chief was a prisoner in the hands of the enemy: the throne of St. Peter, which had been disgraced by the simony, was betrayed by the cowardice of Vigilius, who yielded, after a long and inconsistent struggle, to the despotism of Justinian and the sophistry of the Greeks. His apostacy provoked the indignation of the Latins, and no

5th general council;  
114 of Constantinople,  
450, A. D.  
333, May  
3-June 7.



his declaration, that the body of Christ was incorruptible, and that his manhood was never subject to any wants and infirmities, the inheritance of our mortal flesh. This *phantastic* opinion was announced in the last edicts of Justinian; and at the moment of his sensible departure, the clergy had refused to subscribe, the prince was prepared to persecute, and the people were resolved to suffer or resist. A bishop of Treves, secure beyond the limits of his power, addressed the monarch of the East in the language of authority and affection. "Most gracious Justinian, remember your baptism and your creed! Let not your gray hairs be defiled with heresy. Recall your fathers from exile, and your followers from perdition. You cannot be ignorant, that Italy and Gaul, Spain and Africa, already deplore your fall, and anathematize your name. Unless, without delay, you destroy what you have taught; unless you exclaim with a loud voice, I have erred, I have sinned, anathema to Nestorius, anathema to Eutyches, you deliver your soul to the same flames in which *they* will eternally burn." He died and made no sign.\* His death restored in some degree the peace of the church, and the reigns of his four successors, Justin, Tiberius,

\* See the History of Treves, which runs, *lib. p. 511-513*; he himself, the son of the Gallian prefect, *Gregen. Epist. l. vi. ep. 4*; in *Gregen. tom. vi. p. 1077*, was separated from the communion of the four patriarchs by his refusal to renounce the *chirographum*. See some slight notices of the *canonization of Justinian*. (A. D. 542. See 55.)



orthodox (the prevailing) party devised new modes of speech, and argument, and interpretation: to either nature of Christ, they speciously applied a proper and distinct energy; but the difference was no longer visible when they allowed that the human and the divine will were invariably the same.\* The disease was attended with the customary symptoms; but the Greek clergy, as if satiate with the endless controversy of the incarnation, instilled a healing counsel into the ear of the prince and people. They declared themselves *monothelites*, (asserters of the unity of will), but they treated the words as new, the questions as superfluous; and recommended a religious silence as the most agreeable to the penitence and charity of the gospel. This law of silence was successively imposed by the *ecthesis* or exposition of Heraclius, the *type* or model of his grandson Constant;† and the imperial edicts were subscribed with alacrity or reluctance by the four patriarchs of Rome, Constantinople, Alexandria, and Antioch. But the bishop and monks of Jerusalem sounded the alarm; in the language, or even in the silence, of the Greeks, the Latin churches detected a la-

The *ecthesis* of Heraclius, A. D. 630; the *type* of Constantine, A. D. 638.

\* See the *sermões* both to Polycarpus (Dionysius Thesaur. tom. v. l. 12, p. 8-12), and the *sermões* of this controversy are included in the Greek *theologia* between Marcellus and Theodorus, (ed. J. J. G. tom. 1, p. 102; J. J. G. tom. 1, p. 102-103), which contains a full conference, and produced as a short-lived conversion.

† The *type* of Constantine is the *type* of Constantine (Grell, tom. 1, p. 102). The *type* of Constantine is the *type* of Constantine, or the *type* of Constantine, is the original, Constantine, A. D. 638, and the reproduction of the *type* of Constantine. The *type* of Pope Martin of Anagnin, a Gallican bishop, signified the *type* of Constantine and the *type* of Constantine, with equal frequency, (p. 102).



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\*\*\*\*\*

tent heresy; and the obedience of Pope Honorius to the commands of his sovereign was retracted and censured by the bolder ignorance of his successors. They condemned the execrable and abominable heresy of the Monothelites, who revived the errors of Manes, Appollinaris, Eutyches, &c.; they signed the sentence of excommunication on the tomb of St. Peter; the ink was mingled with the sacramental wine, the blood of Christ; and no ceremony was omitted that could fill the superstitious mind with horror and affright. As the representative of the western church, Pope Martin and his Lateran synod anathematized the perfidious and guilty silence of the Greeks; one hundred and five bishops of Italy, for the most part the subjects of Constantine, presumed to repudiate his wicked *type* and the impious *edicts* of his grandfather, and to confound the authors and their adherents, with the twenty-one notorious heretics, the apostates from the church, and the organs of the devil. Such an insult under the tamest reign could not pass with impunity. Pope Martin ended his days on the inhospitable shore of the Tauric Chersonesus, and his oracle, the abbot Maximus, was inhumanly chastised by the amputation of his tongue and his right hand.\* But the same invincible spirit survived in their successors, and the triumph of the Latins avenged

\* The suffrages of Martin and Maximus are described with pathetic simplicity in the original letters and *types* (Council, tom. vi. p. 86-78. Baron. Annal. Eccles. A. D. 648, 80, 7, &c. *see* *supra* subject *quæstio*). Yet the punishment of their disobedience, *slips* and *supra* *supra* *supra*, had been previously announced in the *Type* of Constantine (Council, tom. vii. p. 210).

their recent defeat, and obliterated the disgrace of the three chapters. The synods of Rome were confirmed by the sixth general council of Constantinople, in the palace and the presence of a new Constantine, a descendant of Heteradius. The royal convert converted the Byzantine pontiff and a majority of the bishops; the dissenters, with their chief, Macarius of Antioch, were condemned to the spiritual and temporal pains of heresy; the East condescended to accept the lessons of the West; and the creed was finally settled, which teaches the catholics of every age, that two wills or energies are harmonized in the person of Christ. The majesty of the pope and the Roman synod was represented by two priests, one deacon, and three bishops; but these obscure Latins had neither arms to compel, nor treasures to bribe, nor language to persuade; and I am ignorant by what arts they could determine the lofty emperor of the Greeks to abjure the catechism of his infancy, and to persecute the religion of his fathers. Perhaps the monks and people of Constantinople were favourable to the Lateran creed, which is indeed the least favourable of the two: and the suspicion is counte-

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5th general council  
Hd of Constantinople.  
A. D. 680,  
Nov. 7—  
A. D. 681,  
Sept. 28.

Thiersch (Annals, tom. iii. p. 268) most erroneously supposes that the 121 bishops of the Roman synod transported themselves to Constantinople; and by adding them to the 108 Greeks, thus compose the 229 bishops of 231 bishops.

\* The Monothelite Constant was hated by all he was hated (1298) Theodosius, Chap. p. 122) severely reprimanded. When the Monothelite monk filled in his sermons the people shouted, I saw answers (Annals, tom. iii. p. 1012). But this was a natural and transient emotion; and I much fear that the latter is an association of orthodoxy in the good people of Constantinople.

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nanced by the unnatural moderation of the Greek clergy, who appear in this quarrel to be conscious of their weakness. While the synod debated, a fanatic proposed a more summary decision, by raising a dead man to life: the prelates assisted at the trial, but the acknowledged failure may serve to indicate, that the passions and prejudices of the multitude were not enlisted on the side of the Monothelites. In the next generation, when the son of Constantine was deposed and slain by the disciple of Macarius, they tasted the feast of revenge and dominion: the image or monument of the sixth council was defaced, and the original acts were committed to the flames. - But in the second year, their patron was cast headlong from the throne, the bishops of the East were released from their occasional conformity, the Roman faith was more firmly replanted by the orthodox successors of Bardanes, and the fine problems of the incarnation were forgotten in the more popular and visible quarrel of the worship of images.<sup>2</sup>

Union of  
the Greek  
and Latin  
Churches.

Before the end of the seventh century, the creed of the incarnation, which had been defined at Rome and Constantinople, was uniformly preached in the remote islands of Britain and Ireland.<sup>3</sup>

<sup>2</sup> The history of monothelism may be found in the Acts of the Synods of Rome, (tom. vii, p. 77-203, 321-608) and Constantinople, (p. 100-1449). Basilides extracted some original documents from the Vatican library: and his chronology is revised by the diligence of Pagi. Even Dupin (*Bibliothèque Ecclésiastique*, tom. vi, p. 37-71) and Bingham (*Hist. de l'Eglise*, tom. i, p. 541-553) added a tolerable abridgement.

<sup>3</sup> In the Lateran synod of 619, Wilfrid, all Anglo-Saxon bishops, subscribed pro curia Aquilonensi, contra Britanniae et Hiberniæ *quæ*  
ch

the same ideas were entertained, or rather the same words were repeated, by all the Christians whose liturgy was performed in the Greek or the Latin tongue. Their numbers, and visible splendour, bestowed an imperfect claim to the appellation of catholics: but in the East, they were marked with the less honourable name of *Melchites* or royalists: of men, whose faith, instead of resting on the basis of scripture, reason, or tradition, had been established, and was still maintained, by the arbitrary power of a temporal monarch. Their adversaries might allege the words of the fathers of Constantinople, who profess themselves the slaves of the king; and

in Anglorum et Romanorum, acrum sententia et pietatis gentibus collaturus, (Eusebii, lib. VII. c. 30. Walfridi, c. 31. apud Pagi. Critica, tom. III. p. 98.) Theodore (theophrastus) iussu Justiniani acclimatizatus et philosophus) was long exiled at Rome, (Concil. rom. vol. II. p. 714;) but he contented himself with holding (A. D. 580) his provincial synod at Marone, in which he decreed the doctrine of Pope Martin and the First Lateran council against the Monothelites, (Concil. rom. vol. III. p. 397, 401.) Theodore, a monk of Tarsus in Cilicia, had been raised to the primacy of Britain by Pope Vigilius, (A. D. 602, see Burnside and Pagi, whose esteem for his learning and piety was tainted by some distrust of his national character—an odd contradiction visible still, Greenough says, in certain old processes introduced.) The Clifton was sent from Rome to Canterbury under the guise of an African monk, (Beda Hist. Eccles. Anglorum, lib. 1. c. 13.) He adhered to the Roman doctrine; and the same creed of the incarnation has been uniformly transmitted from Theodore to the modern prelates, whose sound understanding is perhaps seldom agitated with that obscure mystery.

\* This name, unknown till the 13th century, appears to be of Syrian origin. It was invented by the Jacobites, and eagerly adopted by the Nestorians and Mahomedans; but it was scrupled without success by the catholics, and is frequently used in the *Annals of Eastern Christianity*, (Burnside, Origines, tom. II. p. 397, 401; tom. III. p. 213. Burnside, Hist. Eccles. Alexandr. p. 215.) \* *Bartholomaeus* or *Bartholomaeus* was the designation of the fathers of Constantinople, (Concil. rom. ed. p. 743.)

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PERPETUAL

Perpetual  
separation  
of the ori-  
ental sects

they might relate, with malicious joy, how the decrees of Chalcedon had been inspired and reformed by the emperor Marcian and his virgin bride. The prevailing faction will naturally inculcate the duty of submission, nor is it less natural that dissenters should feel and assert the principles of freedom. Under the rod of persecution, the Nestorians and Monophysites degenerated into rebels and fugitives; and the most ancient and useful allies of Rome were taught to consider the emperor not as the chief, but as the enemy, of the Christians. Language, the leading principle which unites or separates the tribes of mankind, soon discriminated the sectaries of the East, by a peculiar and perpetual badge, which abolished the means of intercourse and the hope of reconciliation. The long dominion of the Greeks, their colonies, and, above all, their eloquence, had propagated a language doubtless the most perfect that has been contrived by the art of man. Yet the body of the people, both in Syria and Egypt, still persevered in the use of their national idioms; with this difference however, that the Coptic was confined to the rude and illiterate peasants of the Nile, while the Syriac,\* from the mountains of Assyria to the Red Sea, was adapted to the higher topics of poetry and argu-

\* The Syriac, which the authors reckon as the primitive language, was divided into three dialects.—1. The *Assyrian*, as it was spoken in Persia and the cities of Mesopotamia. 2. The *Palæstine*, which was used in Jerusalem, Damascus, and the rest of Syria. 3. The *Nestorian*, the native idiom of the mountains of Angora and the villages of Irak, (Gerges Whilphong Hist. Orient. p. 11). On the Syrian, see Euseb. *Deus. Lib. viii. c. 10*, p. 126, &c., where the Syriac name could give it to the Arabs.



ment. Armenia and Abyssinia were infected by the speech or learning of the Greeks; and their barbaric tongues, which had been revived in the studies of modern Europe, were unintelligible to the inhabitants of the Roman empire. The Syriac and the Coptic, the Armenian and the Ethiopic, are consecrated in the service of their respective churches; and their theology is enriched by domestic versions\* both of the scriptures and of the most popular fathers. After a period of thirteen hundred and sixty years, the spark of controversy, first kindled by a sermon of Nestorius, still burns in the bosom of the East, and the hostile communions still maintain the faith and discipline of their founders. In the most abject state of ignorance, poverty, and servitude, the Nestorians and Monophysites reject the spiritual supremacy of Rome, and cherish the toleration of their Turkish masters, which allows them to anathematize, on one hand, St. Cyril and the synod of Ephesus; on the other, Pope Leo and the council of Chalcedon. The weight which they cast into the downfall of the eastern empire demands our notice; and the reader may be amused with the various prospects of, I. The Nestorians. II. The Jacobites. III. The Maronites.

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\* I shall not censure my ignorance with the spoils of Simon, Walton, M. Wetsen, Assemanus, Ludolphus, La Caze, whom I have consulted with some care. It appears, 1. That, of all the versions which are celebrated by the fathers, it is doubtful whether any are now extant in their primitive integrity. 2. That the Syriac has the best claim; and that the consent of the oriental sects is a proof that it more ancient than their schism.

\* On the account of the Monophysites and Nestorians, I am deeply indebted to the Bibliotheca Orientalis Clementina, Valignus et Joseph

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IV. The Armenians. V. The Copts; and VI. The Abyssinians. To the three former, the Syriac is common; but of the latter, each is discriminated by the use of a national idiom. Yet the modern natives of Armenia and Abyssinia would be incapable of conversing with their ancestors; and the christians of Egypt and Syria, who reject the religion, have adopted the language, of the Arabians. The lapse of time has seconded the sacerdotal arts; and in the East, as well as in the West, the Deity is addressed in an obsolete tongue, unknown to the majority of the congregation.

L. THE NESTORIANS.

I. Both in his native and his episcopal province, the heresy of the unfortunate Nestorius was speedily obliterated. The oriental bishops, who at Ephesus had resisted to his face the arrogance of Cyril, were mollified by his tardy concessions. The same prelates, or their successors, subscribed, not without a murmur, the decrees of Chalcedon; the power of the Monophysites reconciled them with the catholics in the conformity of passion, of interest, and insensibility of belief; and their last reluctant sigh was breathed in the defence of the three chapters. Their dissenting brethren, less moderate, or more sincere, were crushed by the penal laws; and as early as

Simon Asenutius. That learned Maronite was dispatched in the year 1713, by Pope Clement XI. to visit the monasteries of Egypt and Syria in search of MSS. His four folio volumes, published at Rome in 1718-1728, contain a part only, though perhaps the most valuable, of his extensive project. As a native and as a scholar, he possessed the Syriac literature; and, though a dependent of Rome, he wishes to be moderate and candid.

the reign of Justinian, it became difficult to find a church of Nestorians within the limits of the Roman empire: Beyond those limits they had discovered a new world, in which they might hope for liberty, and aspire to conquest. In Persia, notwithstanding the resistance of the Magi, Christianity had struck a deep root, and the nations of the East reposed under its salutary shade. The *catholic*, or primate, resided in the capital: in his synods, and in their dioceses, his metropolitans, bishops, and clergy, represented the pomp and honour of a regular hierarchy: they rejoiced in the increase of proselytes, who were converted from the Zendavesta to the Gospel, from the secular to the monastic life: and their zeal was stimulated by the presence of an artful and formidable enemy. The Persian church had been founded by the missionaries of Syria: and their language, discipline, and doctrine, were closely interwoven with its original frame. The *catholics* were elected and ordained by their own suffragans; but their filial dependence on the patriarchs of Antioch is attested by the canons of the oriental church.\* In the Persian school of Ecles-

\* See the Arabic canons of Nice in the translation of Abraham Ecclésiaste, N<sup>o</sup>. 37, 38, 39, 40; (Goud. tom. ii. p. 223, 224, edit. Voss.) These vulgar titles, *Nicene* and *Arabic*, are both spurious. The council of Nice enacted no more than twenty canons, (Theodoret, Hist. Ecclési. l. i. c. 83; and the remainder, seventy or eighty, were collected from the synods of the Greek church. The Syriac edition of Maronius is an longer extract, (Asserius, Biblioth. Oriental. tom. i. p. 154; tom. ii. p. 174; and the Arabic version is marked with many recent interpolations. Yet this code contains many curious relics of sacerdotal discipline; and since it is equally revered by all the eastern monarchs, it was probably finished before the schism of the Nestorians and Jacobites, (Patrie, Biblioth. Orient. tom. xi. p. 303-307).

sa,<sup>2</sup> the rising generations of the faithful imbibed their theological idiom; they studied in the Syriac version the ten thousand volumes of Theodoret of Mopsuestia, and they revered the apostolic faith and holy martyrdom of his disciple Nestorius, whose person and language were equally unknown to the nations beyond the Tigris. The first indelible lesson of Ibas, bishop of Edessa, taught them to execrate the *Egyptians*, who, in the synod of Ephesus, had impiously confounded the two natures of Christ. The flight of the masters and scholars, who were twice expelled from the Athens of Syria, dispersed a crowd of missionaries, inflamed by the double zeal of religion and revenge. And the rigidity of the Monophysites, who, under the reigns of Zeno and Anastasius, had invaded the thrones of the East, provoked their antagonists, in a land of freedom, to avow a moral, rather than a physical, union of the two persons of Christ. Since the first preaching of the gospel, the Sasanian kings beheld, with an eye of suspicion, a race of aliens and apostates, who had embraced the religion, and who might favour the cause, of the hereditary foes of their country. The royal edicts had often prohibited their dangerous correspondence with the Syrian clergy; the progress of the schism was grateful to the jealous pride of Perozes; and he listened to the eloquence of an artful prelate, who painted Nesto-

<sup>2</sup> Theodoret the reader (A. B. c. 3, 48, 24) censure Hilar. Eusebius has noticed this Persian school of Edessa. Its ancient splendour, and the two eras of its downfall, (A. D. 431 and 489), are clearly discussed by Assemani, *Biblioth. Orient. tom. ii. p. 402*; *ibid. p. 276-278*; *iv. p. 70, 924*.

thus as the friend of Persia, and urged him to secure the fidelity of his Christian subjects, by granting a just preference to the victims and enemies of the Roman tyrant. The Nestorians composed a large majority of the clergy and people: they were encouraged by the smile, and armed with the sword, of despotism; yet many of their weaker brethren were startled at the thought of breaking loose from the communion of the Christian world, and the blood of seven thousand seven hundred Monophysites or catholics, confirmed the uniformity of faith and discipline in the churches of Persia.\* Their ecclesiastical institutions are distinguished by a liberal principle of reason, or at least of policy: the austerity of the cloister was relaxed and gradually forgotten; houses of charity were endowed for the education of orphans and foundlings; the law of celibacy, so forcibly recommended to the Greeks and Latins, was disregarded by the Persian clergy; and the number of the elect was multiplied by the public and reiterated nuptials of the priests, the bishops, and even the patriarch himself. To this standard of natural and religious freedom, myriads of fugitives resorted from all the provinces of the eastern empire: the narrow bigotry of Justinian was punished by the emigration of his most industrious subjects; they transported into Persia the

see ministers of Persia, A. D. 303, &c.

\* A dissertation on the state of the Nestorians has appeared in the hands of Assemani in a folio volume of 222 pages, and its learned observations are digested in the most bold order. Besides the 10th volume of the *Biblioteca Orientale*, (see extracts in the three preceding notes from, i. p. 335; ii. p. 375-383; iii. 64-70, 318-395. &c. 400-408, 450-489) may be usefully consulted.



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arts both of peace and war: and those who deserved the favour, were promoted in the service, of a discerning monarch. The arms of Nushirvan, and his fiercer grandson, were assisted with advice, and money, and troops, by the desperate sectaries, who still lurked in their native cities of the East; their zeal was rewarded with the gift of the catholic churches: but when those cities and churches were recovered by Heraclius, their open profession of treason and heresy compelled them to seek a refuge in the realm of their foreign ally. But the seeming tranquillity of the Nestorians was often endangered, and sometimes overthrown. They were involved in the common evils of oriental despotism: their amity to Rome could not always atone for their attachment to the gospel: and a colony of three hundred thousand Jacobites, the captives of Apamea and Antioch, was permitted to erect an hostile altar in the face of the *catholic*, and in the sunshine of the court. In his last treaty, Justinian introduced some conditions which tended to enlarge and fortify the toleration of Christianity in Persia. The emperor, ignorant of the rights of conscience, was incapable of pity or esteem for the heretics who denied the authority of the holy synods: but he flattered himself that they would gradually perceive the temporal benefits of union with the empire and the church of Rome; and if he failed in exciting their gratitude, he might hope to provoke the jealousy of their sovereign. In a later age, the Lutherans have been burnt as

Paris and protected in Germany, by the superstition and policy of the most Christian kings.

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The desire of gaining souls for God, and subjects for the church, has excited in every age the diligence of the Christian priests. From the conquest of Persia they carried their spiritual arms to the north, the east, and the south: and the simplicity of the gospel was fashioned and painted with the colours of the Syrian theology. In the sixth century, according to the report of a Nestorian traveller,\* Christianity was successfully preached to the Bactrians, the Huns, the Persians, the Indians, the Persarmenians, the Medes, and the Elamites; the barbaric churches, from the gulf of Persia to the Caspian sea, were almost infinite; and their recent faith was conspicuous in the number and sanctity of their monks and martyrs. The pepper coast of Malabar, and the isles of the ocean, Socotora and Ceylan, were peopled with an increasing multitude of Christians, and the bishops and clergy of those exques-

These missions to Tartary, India, China, &c.  
A. D. 500-1200.

\* See the *Topographia Christiana of Cosmas*, surnamed *Indicopleustes*, on the *Indian Geography*, l. ii, p. 178, 1784: l. xl, p. 337. The entire work, of which some curious extracts may be found in *Florus*, (Cœl. xxvii, p. 2, 10, edit. Hoeschel); *Theophrastus*, (in the 1st Part of his *Relations des Voyages*, &c., and *Forsterius*, *Relat. Voyag.* l. vi, c. 15, tom. ii, p. 603-617), has been published by Father Montfaucon at Paris 1707, in the *Nova Collectio Patrum*, tom. ii, p. 113-346. It was the design of the author to refute the impious theory of those who maintain that the earth is a globe, and not a flat oblong table, as it is represented in the Scriptures, (l. i, p. 138). But the nonsense of the work is mingled with the practical knowledge of the traveller, who performed his voyage A. D. 522, and published his book at Alexandria, A. D. 547, (l. i, p. 140, 141; *Montfaucon*, *Præf.* n. 2). The Nestorianism of Cosmas, unknown to his learned editor, was detected by Le Gossé, (*Christianisme des Indes*, tom. i, p. 40-42), and is confirmed by Assemani, (*Biblioth. Orient. tom. iv*, p. 663, 668).

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tered regions derived their ordination from the catholic of Babylon. In a subsequent age, the zeal of the Nestorians overleaped the limits which had confined the ambition and curiosity both of the Greeks and Persians. The missionaries of Balch and Samarcand pursued without fear the footsteps of the roving Tartar, and insinuated themselves into the camps of the valleys of Imaus and the banks of the Selinga. They exposed a metaphysical creed to those illiterate shepherds; to those sanguinary warriors, they recommended humanity and repose. Yet a khan, whose power they vainly magnified, is said to have received at their hands the rites of baptism, and even of ordination; and the fame of *Prester* or *Presbyter John*\* has long amused the credulity of Europe. The royal convert was indulged in the use of a portable altar; but he despatched an embassy to the patriarch, to inquire how, in the season of Lent, he should abstain from animal food, and how he might celebrate the Eucharist in a desert that produced neither corn nor wine. In their progress by sea and land, the Nestorians entered China by the port of Canton and the northern residence of Sigan. Unlike the senators of Rome, who assumed with a smile the

\* In its long progress to Mosul, Jerusalem, Rome, &c. the story of *Prester John* expanded in a manifold tale, of which some features have been borrowed from the *Lama of Thibet*, (*Hist. Géographique des Tartares*, p. 54, p. 471. *Hist. de Gengiskan*, p. 31, An.), and was ignorantly transferred by the Portuguese to the emperor of Abyssinia, (Randolph. *Hist. Abyssin. Comment.* l. ii, c. 1). Yet it is probable that in the sixth and sixth centuries, Nestorian Christianity was professed in the land of Exaltet, (*d'Herbelot*, p. 256, 713, 929, *Asiaticum*, tom. iv, p. 408-504).

characters of priests and augurs, the mandarins, who affect in public the reason of philosophers, are devoted in private to every mode of popular superstition. They cherished and they confounded the gods of Palestine and of India; but the propagation of Christianity awakened the jealousy of the state, and after a short vicissitude of favour and persecution, the foreign sect expired in ignorance and oblivion.<sup>a</sup> Under the reign of the caliphs, the Nestorian church was diffused from China to Jerusalem and Cyprus; and their numbers, with those of the Jacobites, were computed to surpass the Greek and Latin communions.<sup>b</sup> Twenty-five metropolitans or archbishops composed their hierarchy, but several of these were dispensed, by the distance and danger of the way, from the duty of personal attendance, on the easy condition that every six years they should testify their faith and obedience to the *catholic* or patriarch of Babylon, a vague appellation, which has been successively applied to the royal seats of Seleucia, Ctesiphon, and Bagdad. These remote branches are long since

<sup>a</sup> The Christianity of China, between the seventh and the thirteenth century, is vividly proved by the account of Chinese, Arabian, Syrian, and Latin writers, (Chenmanni, *Biblioth. Orient. tom. iv. p. 302-302* Mart. de l'Asie mine. des Inscriptions, tom. xiv. p. 601-619). The inscription of Singaï, which testifies the fortune of the Nestorian church, from the first mission, A. D. 635, to the current year 781, is recited at length by La Croix, Voltaire, &c. who become the dupes of their own reasoning, while they are advised a *jeu* of words.

<sup>b</sup> Jacobites or Nestorians places near Greece and Latins. Jacobus V. trian, Hist. Hierosol. i. li. c. 74, p. 1682, in the *Genea Dei per Femina*. The numbers are given by Toussaint, *Discipline de l'Eglise*, tom. i. p. 472.

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withered; and the old patriarchal trunk\* is now divided by the *Elijahs* of Mosul, the representatives, almost in lineal descent, of the genuine and primitive succession, the *Josephs* of Amida, who are reconciled to the church of Rome,† and the *Simeons* of Van or Ormia, whose revolt, at the head of forty thousand families, was promoted in the sixteenth century by the Sophists of Persia: The number of three hundred thousand is allowed for the whole body of the Nestorians, who, under the name of Chaldeans or Assyrians, are confounded with the most learned or the most powerful nation of eastern antiquity.

The Christian-  
ism of St.  
Thomas  
in India,  
A. D. 853.

According to the legend of antiquity, the gospel was preached in India by St. Thomas.‡ At the end of the ninth century, his shrine, perhaps in the neighbourhood of Madras, was devoutly visited by the ambassadors of Alfred, and their return with a cargo of pearls and spices rewarded the zeal of

\* The division of the patriarchates may be traced in the *Bibliotheca Orient. of Assemani*, tom. i. p. 323-349; tom. ii. p. 437, &c.; tom. iii. p. 803, p. 821-823; tom. iv. p. 165-169, p. 423, p. 472-473, &c.

† The posthumous language of Rome, in the subscription of a Nestorian patriarch, is elegantly represented in the sixth book of Fin-Paul, Babylon, Nineveh, Antioch, and the trophies of Alexander, Tiber, and Ecbatana, the Tigris and Indus.

‡ The Indian missionary St. Thomas, an apostle, a Manichæan, or an Armenian merchant, (La Croix, *Christianisme des Indes*, tom. i. p. 57-70), was famous, however, as early as the time of Jerome, (ad Marcellinum epist. 14<sup>th</sup>). Marco Polo was informed on the spot that he suffered martyrdom in the city of Malabar, or Meliapour, a league only from Madras, (d'Auxille, *Éclaircissements sur l'Inde*, p. 123), where the Portuguese founded an episcopal church under the name of St. Thomas, and where the saint performed an annual miracle, till he was silenced by the profane nighty-threes of the English, (La Croix, tom. ii. p. 7-18).



the English monarch, who entertained the largest projects of trade and discovery.\* When the Portuguese first opened the navigation of India, the Christians of St. Thomas had been seated for ages on the coast of Malabar, and the difference of their character and colour attested the mixture of a foreign race. In arms, in arts, and possibly in virtue, they excelled the natives of Hindostan: the husbandmen cultivated the palm-tree, the merchants were enriched by the pepper-trade, the soldiers preceded the *nairs* or nobles of Malabar, and their hereditary privileges were respected by the gratitude or the fear of the king of Cochin and the Zamorin himself. They acknowledged a Gentoo sovereign, but they were governed, even in temporal concerns, by the bishop of Angamala. He still asserted his ancient title of metropolitan of India, but his real jurisdiction was exercised in fourteen hundred churches, and he was intrusted with the care of two hundred thousand souls. Their religion A. D. 1500.  
&c. would have rendered them the firmest and most cordial allies of the Portuguese, but the inquisitors soon discerned in the Christians of St. Thomas, the unpardonable guilt of heresy and schism. Instead of owning themselves the sub-

\* Neither the author of the *Roman Chronicle*, (A. D. 1583), nor William of Malmesbury, the *British Regum Anglorum*, l. ii. c. 4, p. 674, were capable, in the twelfth century, of inventing this extraordinary story; they are incapable of explaining the motives and manner of Alfred; and their hasty notion serves only to provoke our curiosity. William of Malmesbury feels the difficulty of the enterprise, *quod quis in hoc ævulo narraret?* and I cannot suspect that the English ambassadors collected their cargo and legend in Egypt. The royal author has not enriched his *Oronox* (see Harington's *Maritima*) with an Indian as well as a Scotchman's voyage.

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.....

jects of the Roman pontiff, the spiritual and temporal monarch of the globe, they adhered, like their ancestors, to the communion of the Nestorian patriarch; and the bishops whom he ordained at Mesul, traversed the dangers of the sea and land to reach their diocese on the coast of Malabar. In their Syrian liturgy, the names of Theodore and Nestorius were piously commemorated: they united their adoration of the two persons of Christ: the title of Mother of God was offensive to their ear, and they measured with scrupulous avarice the honours of the Virgin Mary, whom the superstition of the Latins had almost exalted to the rank of a goddess. When her image was first presented to the disciples of St. Thomas, they indignantly exclaimed, "We are Christians, not idolaters!" and their simple devotion was content with the veneration of the cross. Their separation from the western world had left them in ignorance of the improvements, or corruptions, of a thousand years; and their conformity with the faith and practice of the fifth century, would equally disappoint the prejudices of a papist or a protestant. It was the first care of the ministers of Rome to intercept all correspondence with the Nestorian patriarch, and several of his bishops expired in the prisons of the holy office. The flock, without a shepherd, was assaulted by the power of the Portuguese, the arts of the Jesuits, and the zeal of Alexes de Menezes, archbishop of Goa, in his personal visitation of the coast of Malabar. The synod of Diamper, at which he presided, consummated the pious work of the reunion, and rigorously

imposed the doctrine and discipline of the Roman church, without forgetting auricular confession, the strongest engine of ecclesiastical torture. The memory of Theodore and Nestorius was condemned, and Malabar was reduced under the dominion of the pope, of the primate, and of the Jesuits who invaded the see of Angamala or Cranganor. Sixty years of servitude and hypocrisy were patiently endured; but as soon as the Portuguese empire was shaken by the courage and industry of the Dutch, the Nestorians asserted, with vigour and effect, the religion of their fathers. The Jesuits were incapable of defending the power which they had abused: the arms of forty thousand Christians were pointed against their falling tyrants: and the Indian archdeacon assumed the character of bishop, till a fresh supply of episcopal gifts and Syriac missionaries could be obtained from the patriarch of Babylon. Since the expulsion of the Portuguese, the Nestorian creed is freely professed on the coast of Malabar. The trading companies of Holland and England are the friends of toleration: but if oppression be less mortifying than contempt, the Christians of St. Thomas have reason to complain of the cold and silent indifference of their brethren of Europe.<sup>1</sup>

<sup>1</sup> Concerning the Christians of St. Thomas, see Assemanus, *Biblioth. Orient.* tom. iv. p. 381-407, 423-451; Geddes's *Church History of Malabar*; and, above all, La Caze, *Histoire du Christianisme Indien*, in two vols. 1780, La Haye, 1798, a learned and agreeable work. They have drawn from the same source, the Portuguese and Italian narratives; and the prejudices of the Jesuits are sufficiently corrected by those of the protestants.

[The following text is faint and mostly illegible, appearing to be a reference or a note.]

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H. THE  
JACOBITE.

H. The history of the Monophysites is less copious and interesting than that of the Nestorians. Under the reigns of Zeno and Anastasius, their artful leaders surprised the ear of the prince, usurped the thrones of the East, and crushed in its native soil the school of the Syrians. The rule of the Monophysite faith was defined with exquisite discretion by Severus patriarch of Antioch; he condemned, in the style of the Hæneticon, the adverse heresies of Nestorism and Eutyches, maintained against the latter the reality of the body of Christ, and constrained the Greeks to allow that he was a liar who spoke truth.\* But the approximation of ideas could not abate the vehemence of passion; each party was the more astonished that their blind antagonist could dispute on so trifling a difference; the tyrant of Syria enforced the belief of his creed, and his reign was polluted with the blood of three hundred and fifty monks, who were slain, not perhaps without provocation or resistance, under the walls of Apamea.<sup>1</sup> The successor of Anastasius replanted the orthodox stand-

A. D. 518.

\* The *sermo Jacobitus* is the expression of Theodore in his treatise of the Incarnation, p. 245, 267, as he is quoted by La Cœzy, (*Histoire Chrétienne d'Égypte et d'Arménie*, p. 33), who exclaims, perhaps too harshly, "Quel affreux monachisme!" Remondet has touched (Hist. Patriarch. Alex. p. 187-198) the oriental accounts of Severus; and his authentic creed may be found in the epistle of John the Jacobite patriarch of Antioch, in the 2d century, to his brother Memnon of Alexandria, (*Œuvres des Pères de l'Orient*, tom. II, p. 139-141).

<sup>1</sup> Epist. Archimanditæ et Monachorum Syriæ Severus ad Euphem Hierusalem, Concil. tom. V, p. 585-602. The outrage of St. Sabas, at the antiochian, will justify the supposition that the arms of these monks were not always spiritual or defensive, (Baronius, A. D. 412, N<sup>o</sup>. 7, &c.).

ard in the East: Severus fled into Egypt; and his friend, the eloquent Xenains,\* who had escaped from the Nestorians of Persia, was suffocated in his exile by the Melchites of Paphlagonia. Fifty-four bishops were swept from their thrones, eight hundred ecclesiastics were cast into prison,† and, notwithstanding the ambiguous favour of Theodora, the oriental flocks, deprived of their shepherds, must insensibly have been either famished or poisoned. In this spiritual distress, the expiring faction was revived, and united, and perpetuated, by the labours of a monk; and the name of James Baradans\* has been preserved in the appellation of *Jacobites*, a familiar sound which may startle the ear of an English reader. From the holy confessors in their prison of Constantinople, he received the powers of bishop of Edessa and

\* Anasimani, (Biblioth. Orient. tom. ii. p. 19-46), and La Caze, *Chrétiens d'Éthiopie*, p. 30-46, will supply the history of Xenains or Philoxenus, bishop of Mabug, or Hierapolis, in Syria. He was a perfect master of the Syriac language, and the author or editor of a version of the New Testament.

† The names and titles of fifty-four bishops who were exiled by Justin, are preserved in the *Chronicle of Theophanes*, (apud Anasimani, tom. ii. p. 46). Severus was personally summoned to Constantinople—for his trial, says Liberatus, (Brev. c. 19)—that his tongue might be cut out, says Evagrius, c. iv. s. 4. The prudent patriarch did not stay to examine the difference. This ecclesiastical revolution is fixed by Pagi to the month of September of the year 528, (Ursinus, tom. ii. p. 306).

\* The church history of James, or Jacobus Baradanes, or Zanzarus, may be gathered from Eusebius, (Anecd. tom. ii. p. 144, 147); Renaudot, (Hist. Patriarch. Alex. p. 133), and Neumaunne, (Biblioth. Orient. tom. i. p. 424; tom. ii. p. 67-69, 324-332, p. 414; tom. iii. p. 393-398). He seems to be unknown to the Greeks. The Jacobites themselves had rather deduce their name and pedigree from St. James the apostle.



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apostle of the East, and the ordination of four-score thousand bishops, priests, and deacons, is derived from the same inexhaustible source. The speed of the zealous missionary was promoted by the fleetest dromedaries of a devout chief of the Arabs; the doctrine and discipline of the Jacobites were secretly established in the dominions of Justinian; and each Jacobite was compelled to violate the laws and to hate the Roman legislator. The successors of Severus, while they lurked in convents or villages, while they sheltered their proscribed heads in the caverns of hermits, or the tents of the Saracens, still asserted, as they now assert, their indefeasible right to the title, the rank, and the prerogatives of patriarch of Antioch: under the milder yoke of the infidels, they reside about a league from Merdin, in the pleasant monastery of Zapharan, which they have embellished with cells, aqueducts, and plantations. The secondary, though honourable, place is filled by the *maphrian*, who, in his station at Mosul itself, defies the Nestorian catholic with whom he contests the supremacy of the East. Under the patriarch and the maphrian, one hundred and fifty archbishops and bishops have been counted in the different ages of the Jacobite church; but the order of the hierarchy is relaxed or dissolved, and the greater part of the dioceses is confined to the neighbourhood of the Euphrates and the Tigris. The cities of Aleppo and Amida, which are often visited by the patriarch, contain some wealthy merchants and industrious mechanics, but the

multitude derive their scanty sustenance from their daily labour: and poverty, as well as superstition, may impose their excessive fasts: five annual lents, during which both the clergy and laity abstain not only from flesh or eggs, but even from the taste of wine, of oil, and of fish. Their present numbers are esteemed from fifty to fourscore thousand souls, the remnant of a populous church, which has gradually decreased under the oppression of twelve centuries. Yet in that long period, some strangers of merit have been converted to the Monophysite faith, and a Jew was the father of Abulpharagius,<sup>2</sup> primate of the East, so truly eminent both in his life and death. In his life, he was an elegant writer of the Syriac and Arabic tongues, a poet, physician, and historian, a subtle philosopher, and a moderate divine. In his death, his funeral was attended by his rival the Nestorian patriarch, with a train of Greeks and Armenians, who forgot their disputes, and mingled their tears over the grave of an enemy. The sect which was honoured by the virtues of Abulpharagius appears, however, to sink below the level of their Nestorian brethren. The superstition of the Jacobites is more abject, their fasts more rigid,<sup>3</sup> their inter-

<sup>2</sup> The account of his person and writings is perhaps the most genuine article in the *Bibliothèque d'Asiaticque*, (tom. II. p. 264-321, under the name of *Grégoire Bar Hebraïe*). La Croix (*Christianisme d'Orient*, p. 12-63) ridicules the prejudice of the Spaniards against the Jewish blood which secretly defiles their church and state.

<sup>3</sup> This excessive abstinence is censured by La Croix, (p. 357), and even by the *Seigneur Asiaticque*, (tom. I. p. 228; tom. II. p. 304, 305).

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tine divisions are more numerous, and their doctors (as far as I can measure the degrees of nonsense) are more remote from the precincts of reason. Something may possibly be allowed for the rigour of the Monophysite theology; much more for the superior influence of the monastic order. In Syria, in Egypt, in Ethiopia, the Jacobite monks have ever been distinguished by the austerity of their penance and the absurdity of their legends. Alive or dead they are worshipped as the favourites of the Deity; the crossier of bishop and patriarch is reserved for their venerable hands; and they assume the government of men, while they are yet reeking with the habits and prejudices of the cloister.

III. THE  
MARONITES.

III. In the style of the oriental Christians, the Monothelites of every age are described under the appellation of *Maronites*; a name which has been insensibly transferred from an hermit to a monastery, from a monastery to a nation. Maron, a saint or savage of the fifth century, displayed his religious madness in Syria; the rival cities of Apamea and Emesa disputed his relics.

\* The state of the Monophysites is excellently illustrated in a dissertation at the beginning of the 1st volume of *Assemani*, which contains 142 pages. The Syriac Chronicle of Gregory Bar-Hebraeus, or Abulpharagius, (*Histor. Orient. tom. ii. p. 521-605*), pursues the double series of the Nestorian schism and the supremacy of the Chalcedonians.

\* The synonymous use of the two words may be proved from Eusebius, (*Annal. tom. ii. p. 491, 507, 537*); and many similar passages which may be found in the numerous works of Eusebius. He was not estimated by any prejudice against the Monophysites of the 5th century; and we may believe a Melchite, whose testimony is confirmed by the Jacobites and Latins.

a stately church was erected on his tomb, and six hundred of his disciples united their solitary cells on the banks of the Orontes. In the controversies of the incarnation, they nicely threaded the orthodox line between the sects of Nestorius and Eutyches; but the unfortunate question of *one will or operation* in the two natures of Christ, was generated by their curious leisure. Their proselyte, the emperor Heraclius, was rejected as a Maronite from the walls of Emesa; he found a refuge in the monastery of his brethren; and their theological lessons were repaid with the gift of a spacious and wealthy domain. The name and doctrine of this venerable school were propagated among the Greeks and Syrians, and their zeal is expressed by Macarius patriarch of Antioch, who declared before the synod of Constantinople, that sooner than subscribe the *two wills* of Christ, he would submit to be hewn piecemeal and cast into the sea.<sup>1</sup> A similar or a less cruel mode of persecution soon converted the unrelenting subjects of the plain, while the glorious title of *Mardaites*,<sup>2</sup> or rebels, was bravely maintained by the hardy natives of mount Libanus. John Maron, one of the most learned and popu-

<sup>1</sup> *Church Hist.* vii. p. 798. The Mardaites cause was supported with distinction and activity by Constantine, a Syrian priest of Apamea, (p. 1042, &c.).

<sup>2</sup> *Thaophanes*, (Chron. p. 292, 296, 298, 307, 320), and *Constantine*, (p. 317, 320), relate the exploits of the Mardaites; the name (*Mardaites*, *μαρδαίται*) is explained by *Le Moine*, (*Voyage de la Syrie*, tom. ii. p. 22); the dates are fixed by *Pagi*, (A. D. 678. N. 4-11) A. D. 686, 687, 688, &c.) and even the obscure story of the patriarch John Maron (*Actes des Patriarches de la Syrie*, tom. i. p. 690-699) illustrated, from the year 688 to 707, the troubles of mount Libanus.

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lar of the monks, assumed the character of patriarch of Antioch; his nephew Abraham, at the head of the Maronites, defended their civil and religious freedom against the tyrants of the East. The son of the orthodox Constantine pursued, with pious hatred, a people of soldiers, who might have stood the bulwark of his empire against the common foes of Christ and of Rome. An army of Greeks invaded Syria; the monastery of St. Maron was destroyed with fire; the bravest chieftains were betrayed and murdered, and twelve thousand of their followers were transplanted to the distant frontiers of Armenia and Thrace. Yet the humble nation of the Maronites has survived the empire of Constantinople, and they still enjoy, under their Turkish masters, a free religion and a mitigated servitude. Their domestic governors are chosen among the ancient nobility; the patriarch, in his monastery of Canobin, still fancies himself on the throne of Antioch; nine bishops compose his synod, and one hundred and fifty priests, who retain the liberty of marriage, are intrusted with the care of one hundred thousand souls. Their country extends from the ridge of mount Libanus to the shores of Tripoli; and the gradual descent affords, in a narrow space, each variety of soil and climate, from the Holy Cedars, erect under the weight of snow,\* to the vine, the

\* In the last century twenty large cedars still remained. (*Voyage de la Roque*, tom. 1, p. 68-76); at present they are reduced to four or five. (*Volney*, tom. 1, p. 264). These trees, so famous in scripture, were guarded by excommunication; the wood was sparingly borrowed



mulberry, and the olive trees of the fruitful valley. In the twelfth century, the Maronites, abjuring the Monothelite error, were reconciled to the Latin churches of Antioch and Rome,\* and the same alliance has been frequently renewed by the ambition of the popes and the distress of the Syrians. But it may reasonably be questioned, whether their union has ever been perfect or sincere; and the learned Maronites of the college of Rome have vainly laboured to absolve their ancestors from the guilt of heresy and schism.\*

IV. Since the age of Constantine, the ARME-  
NIANS\* had signalized their attachment to the reli-  
gion of the Cross.

IV. THE  
ARMENI-  
ANS.

for small crooks, &c. : an annual mass was solemnized under their shade; and they were endowed by the Syrians with a sensitive power of exerting their branches to repel the spore, to which mount Libanus is less faithful than it is painted by Tacitus; later authors equate *sidanus* with *cedrus*—a daring metaphor, (Hist. v. 6).

\* The evidence of William of Tyre (Hist. in Graeco Desper Francos, l. xiii, c. 6, p. 1027) is copied or confirmed by Jacques de Ville, (Hist. Hierosolym. l. ii, c. 77, p. 1003, 1034). But this mutual league expired with the power of the Franks; and Amalricus (who died in 1200) considers the Maronites as a sect of Monothelites, (Hist. Orient. tom. ii, p. 202).

\* I find a description and history of the Maronites in the Voyage de la Syrie et du Mont Liban par la Route, &c. note in Héro, Amsterdam, 1723; particularly tom. i, p. 47-49, p. 174-193; tom. ii, p. 10-120. In the ancient part, he explains the prejudices of Nestor and the other Maronites of Rome, which Anacletus is afraid to recognize, and ashamed to support. Jakschki, (Institut. Hist. Christ. tom. iii, p. 188), Niebuhr, (Voyage de l'Arabie, &c. tom. ii, p. 346, 350-353), and, above all, the judicious Valart, (Voyage en Egypte et en Syrie, tom. ii, p. 4-31, Paris, 1787), may be consulted.

\* The religion of the Armenians is briefly described by La Croix, (Hist. du Christ. de l'Ethiops & de l'Arménie, p. 285-307). He refers to the great Armenian History of Galand, (Paris, in fol. Rome, 1650-1661), and commends the state of Armenia in the 11th volume of the Nouvelles Mémoires des Mœurs du Levant. The work of a Frenchman has sterling merit when it is printed by La Croix.

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gion and empire of the Christians. The disorders of their country, and their ignorance of the Greek tongue, prevented their clergy from assisting at the synod of Chalcedon, and they floated eighty-four years<sup>2</sup> in a state of indifference or suspense till their vacant faith was finally occupied by the missionaries of Julian of Halicarnassus,\* who in Egypt, their common exile, had been vanquished by the arguments or the influence of his rival Severus, the Monophysite patriarch of Antioch. The Armenians alone are the pure disciples of Eutyches, an unfortunate parent who has been renounced by the greater part of his spiritual progeny. They alone persevere in the opinion, that the manhood of Christ was created, or existed without creation, of a divine and incorruptible substance. Their adversaries reproach them with the adoration of a phantom; and they retort the accusation, by deriding or execrating the blasphemy of the Jacobites, who impute to the Godhead the vile infirmities of the flesh, even the natural effects of nutrition and digestion. The religion of Armenia could not derive much glory from the learning or the power of its inhabitants. The royalty expired with the ori-

<sup>2</sup> The schism of the Armenians is placed 84 years after the council of Chalcedon, (Pagi, *Critica*, ad A. D. 453). It was consummated at the end of seventy years; and it is from the year of Christ 537 that we date the era of the Armenians, *M'Art. de l'Asie*, voir les Dates, p. xxv.

<sup>\*</sup> The sentiments and errors of Julian of Halicarnassus may be seen in Lilexian, (*Rec. c. 1504*); Bazarot, (*Hist. Patriarch. Alex.* p. 122, 303), and Assemanus, (*Biblioth. Orient.* tom. v. *Isacrit. de Monophysitis*, p. viii, p. 289).

gin of their schism, and their Christian kings, who arose and fell in the thirteenth century on the confines of Cilicia, were the clients of the Latins and the vassals of the Turkish sultan of Iconium. The helpless nation has seldom been permitted to enjoy the tranquillity of servitude. From the earliest period to the present hour, Armenia has been the theatre of perpetual war: the lands between Tauris and Erivan were dispeopled by the cruel policy of the Sophies; and myriads of Christian families were transplanted, to perish or to propagate in the distant provinces of Persia. Under the rod of oppression, the zeal of the Armenians is fervent and intrepid: they have often preferred the crown of martyrdom to the white turban of Mahomet; they devoutly hate the error and idolatry of the Greeks; and their transient union with the Latins is not less devoid of truth, than the thousand bishops whom their patriarch offered at the feet of the Roman pontiff.<sup>a</sup> The catholic or patriarch of the Armenians, resides in the monastery of Ekmiashin, three leagues from Erivan. Forty-seven archbishops, each of whom may claim the obedience of four or five suffragans, are consecrated by his hand; but the greater part are only titular prelates, who dignify with their presence and service the simpli-

<sup>a</sup> See a remarkable fact of the ninth century in the History of Nisibis Chodiam, (p. 258). Yet three hundred years before, Plinius (Hæst. 3, p. 48, edit. Martini) had gloried in the conversion of the Armenians.—Compare *Geogr. antiquæ* c. 12, p. 100.

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city of his court. As soon as they have performed the liturgy, they cultivate the garden; and our bishops will hear with surprise, that the austerity of their life increases in just proportion to the elevation of their rank. In the four-score thousand towns or villages of his spiritual empire, the patriarch receives a small and voluntary tax from each person above the age of fifteen; but the annual amount of six hundred thousand crowns is insufficient to supply the incessant demands of charity and tribute. Since the beginning of the last century, the Armenians have obtained a large and lucrative share of the commerce of the East: in their return from Europe, the caravan usually halts in the neighbourhood of Erivan, the altars are enriched with the fruits of their patient industry; and the faith of Eutyches is preached in their recent congregations of Barbary and Poland.\*

V. THE  
COSTS  
OF EGYPT.  
LAND.

V. In the rest of the Roman empire, the despotism of the prince might eradicate or silence the sectaries of an obnoxious creed. But the stubborn temper of the Egyptians maintained their opposition to the synod of Chalcedon, and the policy of Justinian condescended to expect and to seize the opportunity of discord. The Monophysite church

\* The travelling Armenians are in the way of every traveller, and their mother church is on the high road between Constantinople and Ispahan: for their present state, see Fabricius, (*Hex. Evangelii* No. c. xxviii, p. 46-51); Olearius, (*l. iv, c. 40*); Chardin, (*vol. ii, p. 222*); Tournefort, (*lettres xx*), and, above all, Tassernier, (*tom. i, p. 78-87, 310-318*), that rambling jeweller, who had read nothing, but had seen so much and so well.



The patri-  
arch The-  
odosius,  
A. D. 437-  
468.

of Alexandria<sup>a</sup> was torn by the disputes of the *corruptibles* and *incorruptibles*, and on the death of the patriarch, the two factions upheld their respective candidates.\* Gaian was the disciple of Julian, Theodosius had been the pupil of Severus: the claims of the former were supported by the consent of the monks and senators, the city and the province; the latter depended on the priority of his ordination, the favour of the empress Theodora, and the arms of the eunuch Narses, which might have been used in more honourable warfare. The exile of the popular candidate to Carthage and Sardinia, inflamed the ferment of Alexandria; and after a schism of one hundred and seventy years, the *Gaianites* still revered the memory and doctrine of their founder. The strength of numbers and of discipline was tried in a desperate and bloody conflict; the streets were filled with the dead bodies of citizens and soldiers; the pious women, ascending the roofs of their houses, showered down every sharp or ponderous utensil on the heads of the enemy; and the final victory of Narses was owing to the flames, with which he wasted the third capital of the Roman world. But the lieutenant of Justinian had not conquered in the cause of an heretic; Theodosius himself was speedily, though gently, removed; and Paul of Tanis, an orthodox monk, was raised to the throne of Athanasius. The

Paul,  
A. D. 428.

<sup>a</sup> The history of the Alexandrian patriarchs, from Diocletian to Benjamin, is taken from Bezaudot, (p. 174-164), and the second tome of the Annals of Eutychius.

\* E. Liberat. Brv. c. 20, 25. Victor. Quen. p. 319, 320. Procop. Anecd. v. 26, 27.



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powers of government were strained in his support; he might appoint or displace the dukes and tribunes of Egypt; the allowance of bread which Diocletian had granted, was suppressed; the churches were shut, and a nation of schismatics was deprived at once of their spiritual and carnal food. In his turn, the tyrant was excommunicated by the zeal and revenge of the people; and none except his servile Melchites would salute him as a man, a Christian, or a bishop. Yet such is the blindness of ambition, that when Paul was expelled on a charge of murder, he solicited, with a bribe of seven hundred pounds of gold, his restoration to the same station of hatred and ignominy.

Apollina-  
rius.  
A. D. 531.

His successor Apollinaris entered the hostile city in military array, alike qualified for prayer or for battle. His troops, under arms, were distributed through the streets; the gates of the cathedral were guarded, and a chosen band was stationed in the choir, to defend the person of their chief. He stood erect on his throne, and throwing aside the upper garment of a warrior, suddenly appeared before the eyes of the multitude in the robes of patriarch of Alexandria. Astonishment held them mute: but no sooner had Apollinaris begun to read the tome of St. Leo, than a volley of curses, and invectives, and stones, assaulted the odious minister of the emperor and the synod. A charge was instantly sounded by the successor of the apostles; the soldiers waded to their knees in blood; and two hundred thousand Christians are said to have fallen by the sword: an incredible account, even if it be extended from the slaughter of a day to the eighteen years of the reign of Apollinaris. Two succeeding

patriarchs, Eulogius\* and John,† laboured in the conversion of heretics, with arms and arguments more worthy of their evangelical profession. The theological knowledge of Eulogius was displayed in many a volume, which magnified the errors of Eutyches and Severus, and attempted to reconcile the ambiguous language of St. Cyril with the orthodox creed of Pope Leo and the fathers of Chalcedon. The boundless aims of John the eleemosynary were dictated by superstition, or benevolence, or policy. Seven thousand five hundred poor were maintained at his expence; on his accession, he found eight thousand pounds of gold in the treasury of the church; he collected ten thousand from the liberality of the faithful; yet the primate could boast in his testament, that he left behind him no more than the third part of the smallest of the silver coins. The churches of Alexandria were delivered to the catholics, the religion of the Monophysites was proscribed in Egypt, and a law was revived which excluded the natives from the honours and emoluments of the state.

CHAP.  
XVII.

Eulogius,  
A. D. 380.

John,  
A. D. 409.

\* Eulogius, who had been a monk of Antioch, was more conspicuous for his abilities than eloquence. He proves that the enemies of the faith, the Nestorians and Theodasians, might not be so reproached; that the same proposition may be orthodox in the mouth of St. Cyril, heretical in that of Eutyches; that the opposite assertions of St. Leo are equally true, &c. His writings are no longer extant, except in the notices of Photius, who had perused them with care and satisfaction. Cod. arab. v. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

† See the life of John the eleemosynary by his contemporary Leonidas, bishop of Neapolis in Cyprus, whose first treatise, whether lost or published, appeared in the same register of Harmerus, (A. D. 910, N. 8; A. D. 920, N. 9; Page, *l'histoire*, tom. II, p. 162, and *Palæstina*, l. v, c. 11) from which p. 429, has been taken some curious observations.

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XLVII.*Their com-  
parison  
and decay.*

A more important conquest still remained, of the patriarch, the oracle and leader of the Egyptian church. Theodosius had resisted the threats and promises of Justinian with the spirit of an apostle or an enthusiast. "Such," replied the patriarch, "were the offers of the tempter when he shewed the kingdoms of the earth. But my soul is far dearer to me than life or dominion. The churches are in the hands of a prince who can kill the body; but my conscience is my own; and in exile, poverty, or chains, I will stedfastly adhere to the faith of my holy predecessors, Athanasius, Cyril, and Dioscorus. Anathema to the tome of Leo and the synod of Chalcedon! Anathema to all who embrace their creed! Anathema to them now and for evermore! Naked came I out of my mother's womb, naked shall I descend into the grave. Let those who love God, follow me and seek their salvation." After comforting his brethren, he embarked for Constantinople, and sustained, in six successive interviews, the almost irresistible weight of the royal presence. His opinions were favourably entertained in the palace and the city; the influence of Theodora assured him a safe conduct and honourable dismissal; and he ended his days, though not on the throne, yet in the bosom of his native country. On the news of his death, Apollinaris indecently feasted the nobles and the clergy; but his joy was checked by the intelligence of a new election; and while he enjoyed the wealth of Alexandria, his rivals reigned in the

monasteries of Thebais, and were maintained by the voluntary oblations of the people. A perpetual succession of patriarchs arose from the ashes of Theodosius; and the Monophysite churches of Syria and Egypt were united by the name of Jacobites and the communion of the faith. But the same faith, which has been confined to a narrow sect of the Syrians, was diffused over the mass of the Egyptian or Coptic nation; who, almost unanimously, rejected the decrees of the synod of Chalcedon. A thousand years were now elapsed since Egypt had ceased to be a kingdom, since the conquerors of Asia and Europe had trampled on the ready necks of a people, whose ancient wisdom and power ascend beyond the records of history. The conflict of zeal and persecution rekindled some sparks of their national spirit. They abjured, with a foreign heresy, the manners and language of the Greeks: every Melchite, in their eyes, was a stranger, every Jacobite a citizen; the alliance of marriage, the offices of humanity, were condemned as a deadly sin; the natives renounced all allegiance to the emperor; and his orders, at a distance from Alexandria, were obeyed only under the pressure of military force. A generous effort might have redeemed the religion and liberty of Egypt, and her six hundred monasteries might have poured forth their myriads of holy warriors, for whom death should have no terrors, since life had no comfort or delight. But experience has proved the distinction of active and passive courage; the fanatic who en-

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Benjamin,  
the Jacobite  
patriarch,  
A. D.  
672-681.

dures without a groan the torture of the rack, or the stake, would tremble and fly before the face of an armed enemy. The pusillanimous temper of the Egyptians could only hope for a change of masters; the arms of Chasroes depopulated the land: yet under his reign the Jacobites enjoyed a short and precarious respite. The victory of Heraclius renewed and aggravated the persecution, and the patriarch again escaped from Alexandria to the desert. In his flight, Benjamin was encouraged by a voice, which bade him expect, at the end of ten years, the aid of a foreign nation, marked like the Egyptians themselves with the ancient right of circumcision. The character of these deliverers, and the nature of the deliverance, will be hereafter explained: and I shall step over the interval of eleven centuries to observe the present misery of the Jacobites of Egypt. The populous city of Cairo affords a residence or rather a shelter for their indigent patriarch, and a remnant of ten bishops: forty monasteries have survived the inroads of the Arabs: and the progress of servitude and apostacy has reduced the Coptic nation to the despicable number of twenty-five or thirty thousand families: a race of illiterate beggars, whose only consolation is derived from

\* This number is taken from the *curiosities* of Bechavelle and the *Egyptians and Christians*, *chap. iv. p. 145. 1586.* and appears more probable than the 800,000 ancient, or 15,000 modern, Copts of Hemmelt's error. Cyril Lucas, the protestant patriarch of Constantinople, laments that those heretics were not more early destroyed than his orthodox Greeks, indignantly applying the words of Isaiah to the oppressors of Rome, (*Ibid. p. 128*), the more perfect expression is contempt, (*Isaiah. Lxx. Evangelist, 140*).



the superior wretchedness of the Greek patriarch and his diminutive congregation.<sup>1</sup>

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VI. The Coptic patriarch, a rebel to the Cæsars, or a slave to the khalifs, still gloried in the filial obedience of the kings of Nubia and Ethiopia. He repaid their homage by magnifying their greatness; and it was boldly asserted that they could bring into the field an hundred thousand horse, with an equal number of camels;<sup>2</sup> that their hand could pour out or restrain the waters of the Nile;<sup>3</sup> and the peace and plenty of Egypt was obtained, even in this world, by the intercession of the patriarch. In exile at Constantinople, Theodosius recommended to his patroness the conversion of the black nations of Nubia,<sup>4</sup> from the tropic of Cancer to

VL THE  
ANTIENTH  
186 AD  
NUBIA.

<sup>1</sup> The history of the Copts, their religion, manners, &c. may be found in the Abbe Renaudot's useful work; together a translation of an original the Clementine Recourse of Egypt, a Journal; in the two volumes of Abbe de Tassin, Paris, 1671; and John Strickland's Account, Venice, 1726. These accounts should be taken with the 15th century. For more recent accounts must be sought, in the travellers into Egypt, and the Nonce's Memoires des Mores et usages, in the last century; Joseph Meuschen's account of Egypt, published at Götting, in plate pages, a slight Histoire d'Egypte, 1747, and 1748.

<sup>2</sup> About the year 731. See Renaudot, Hist. Patriarch. Alex. p. 221, 222; Eliaadi, Hist. Summe p. 98.

<sup>3</sup> Ysaiah, Hist. Ethiopie, et Comment. t. 1, c. 5. Renaudot, Hist. Patriarch. Alex. p. 190, &c. This opinion, introduced into Egypt and Europe by the artists of the Copts, the priests of the Abbe Renaudot, the son and grandson of the Turks and Arabs, has not only the sanction of truth. The rains of Ethiopia do not, in the distance of the Nile, exceed the soil of Hermon. If we never descend to Egypt, within three days journey of the Red Sea, (see d'Arville's Voyage, a canal that should draw the waters would demand, and they would'surpass, the power of the Cataracts.

<sup>4</sup> The Abissinians, who still possess the features and skin more tawny of the Arabs, affect to mind that two thousand years are not

the confines of Abyssinia. Her design was suspected and emulated by the more orthodox emperor. The rival missionaries, a Melchite and a Jacobite, embarked at the same time; but the empress, from a motive of love or fear, was more effectually obeyed; and the catholic priest was detained by the president of Thebais, while the king of Nubia and his court were hastily baptised in the faith of Dioscorus. The tardy envoy of Justinian was received and dismissed with honour; but when he accused the heresy and treason of the Egyptians, the negro convert was instructed to reply that he would never abandon his brethren the true believers, to the persecuting ministers of the synod of Chalcedon.<sup>b</sup> During several ages, the bishops of Nubia were named and consecrated by the Jacobite patriarch of Alexandria: as late as the twelfth century, Christianity prevailed; and some rites, some ruins, are still visible in the savage towns of Sennar and Dongola.<sup>c</sup> But the Nu-

insufficient to change the colour of the human race. The Nubians, an African race, are pure negroes, as black as those of Senegal or Congo, with flat noses, thick lips, and woolly hair, (Boulton, *Hist. Naturelle*, tom. 7, p. 117, 143, 144, 166, 219, edit. in 12mo, Paris, 1759). The ancient's belief, without much attention, the extraordinary perversion which has exercised the philosophers and theologians of modern times.

<sup>a</sup> Azziman, *Biblioth. Orient.* tom. 1, p. 329.

<sup>b</sup> The Christianity of the Nubians, A. D. 1113, is attested by the *sheriff al Edrisi*, falsely described under the name of the Nubian geographer, (p. 18), who represents them as a nation of Jacobites. The rays of historical light that twinkle in the history of Hemmed, (p. 178, 220-224; 281-286, 402, 434, 451, 458), are all previous to this era. See the modern state in the *Lectures Edifiantes*, (Herodot., (c), and *Flushing*, (tom. 12, p. 120-139, par Deshayes).

bians at length executed their threats of returning to the worship of idols: the climate required the indulgence of polygamy, and they have finally preferred the triumph of the Koran to the abasement of the Cross. A metaphysical religion may appear too refined for the capacity of the negro race: yet a black or a parrot might be taught to repeat the words of the Chalcedonian or Monophysite creed.

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Christianity was more deeply rooted in the Abyssinian empire; and, although the correspondence has been sometimes interrupted above seventy or an hundred years, the mother-church of Alexandria retains her colony in a state of perpetual pupillage. Seven bishops once composed the Ethiopic synod: had their number amounted to ten, they might have elected an independent primate; and one of their kings was ambitious of promoting his brother to the ecclesiastical throne. But the event was forestalled, the increase was denied; the episcopal office has been gradually confined to the *abuna*, the head and author of the Abyssinian priesthood; the patriarch supplies each vacancy with an Egyptian monk, and the character of a stranger appears more venerable in the eyes of the people, less dangerous in those of the monarch. It

Church of  
America  
A. D. 1811  
A. D.

\* The string is imperfectly defined by the letters with the title of paragraph. The Athenian text is made only too plain by the fact that it is an account of a correspondence of military letters. It is not in H. A. Strabo, or Comment. 1. 1. 1. 1. The seven letters of Strabo, (p. 311), who wrote A. D. 1221, are unknown to the Athenian.

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The Por-  
tuguese in  
Abyssinia,  
&c. D. 1593-  
1650, &c.

the sixth century, when the schism of Egypt was confirmed, the rival chiefs, with their patrons, Justinian and Theodora, strove to outstrip each other in the conquest of a remote and independent province. The industry of the empress was again victorious, and the pious Theodora has established in that sequestered church the faith and discipline of the Jacobites.\* Encompassed on all sides by the enemies of their religion, the Ethiopians slept near a thousand years, forgetful of the world, by whom they were forgotten. They were awakened by the Portuguese, who, turning the southern promontory of Africa, appeared in India and the Red Sea, as if they had descended through the air from a distant planet. In the first moments of their interview, the subjects of Rome and Alexandria observed the resemblance, rather than the difference, of their faith; and each nation expected the most important benefits from an alliance with their Christian brethren. In their lonely situation, the Ethiopians had almost relapsed into the savage life. Their vessels, which had traded to Ceylon, scarcely presumed to navigate the rivers of Africa; the ruins of Axum were deserted, the nation was scattered in villages, and the emperor (a pompous name)

\* I leave not my Abyssinian Edition (Oxford, 1808, p. 384) should call in question these probable notions of Theodora into Nubia and Ethiopia. The slight notices of Abyssinia till the year 1500 are furnished by Remondin (p. 336-341, 341, 342, 403, 443, &c. 531, 436, 447, 473, 480, 511, 525, 533-364, from the Copie writers. The mind of Jacobites was a perfect blank.

was content, both in peace and war, with the immovable residence of a camp. Conscious of their own indigence, the Abyssinians had formed the rational project of importing the arts and ingenuity of Europe; and their ambassadors at Rome and Lisbon were instructed to solicit a colony of smiths, carpenters, tilers, masons, printers, surgeons, and physicians, for the use of their country. But the public danger soon called for the instant and effectual aid of arms and soldiers to defend an unwarlike people from the barbarians who ravaged the inland country, and the Turks and Arabs who advanced from the sea-coast in more formidable array. Ethiopia was saved by four hundred and fifty Portuguese, who displayed in the field the native valour of Europeans, and the artificial powers of the musket and cannon. In a moment of terror, the emperor had promised to reconcile himself and his subjects to the catholic faith: a Latin patriarch represented the supremacy of the pope; the empire, enlarged in a tenfold proportion, was supposed to contain more gold than the mines of America; and the wildest hopes of avarice and

\* Lapelph. Hist. Ethiop. l. vi. c. 5. The most necessary arts are now taught by the Jews, and the strongest trade is in the hands of the Armenians. What Gregory principally admired and envied was the industry of European-arts of opulence.

\* John Bernersden, whose relation, printed at Lisbon, 1623, was translated into English by Purchas, (Purchas, l. vii. c. 7, p. 1149, &c.) and from thence into French by La Caille, (Christianisme d'Ethiopie, p. 162, 163.) The piece is curious; but the author may be suspected of describing Abyssinia, Rome, and Portugal. His title in the rank of ambassador of Zax and Gondar, (Ethiopie, Comment. No. 101, p. 473.)





guard, and more vigorously prosecuted the pious enterprise of his kinsman. After the amusement of some unequal combats between the Jesuits and his illiterate priests, the emperor declared himself a proselyte to the synod of Chalcedon, presuming that his clergy and people would embrace without delay the religion of their prince. The liberty of choice was succeeded by a law, which imposed, under pain of death, the belief of the two natures of Christ: the Abyssinians were enjoined to work and to play on the Sabbath; and Segued, in the face of Europe and Africa, renounced his connection with the Alexandrian church. A Jesuit, Alphonso Mendez, the catholic patriarch of Ethiopia, accepted in the name of Urban VIII. the homage and abjuration of his penitent. "I confess," said the emperor on his knees, "I confess that the pope is the vicar of Christ, the successor of St. Peter, and the sovereign of the world. To him I swear true obedience, and at his feet I offer my person and kingdom." A similar oath was repeated by his son, his brother, the clergy, the nobles, and even the ladies of the court: the Latin patriarch was invested with honours and wealth; and his missionaries erected their churches or citadels in the most convenient stations of the empire. The Jesuits themselves deplore the fatal indiscretion of their chief, who forgot the mildness of the gospel and the policy of his order, to introduce with hasty violence the liturgy of Rome and the imposition of Portugal. He condemned the ancient practice of circumcision,

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which health rather than superstition had first invented in the climate of Ethiopia.\* A new baptism, a new ordination, was inflicted on the natives; and they trembled with horror when the most holy of the dead were torn from their graves, when the most illustrious of the living were excommunicated by a foreign priest. In the defence of their religion and liberty, the Abyssinians rose in arms, with desperate but unsuccessful zeal. Five rebellions were extinguished in the blood of the insurgents: two plumes were slain in battle, whole legions were slaughtered in the field, or suffocated in their caverns; and neither merit, nor rank, nor sex, could save from an ignominious death the enemies of Rome. But the victorious monarch was finally subdued by the constancy of the nation, of his mother, of his son, and of his most faithful friends. Segued listened to the voice of pity, of reason, perhaps of fear; and his edict of liberty of conscience instantly revealed the tyranny and weakness of the Jesuits. On the death of his father, Basilides expelled the Latin patriarch, and restored to the wishes of the na-

\* I am aware how tender is the question of circumcisions. Yet I will affirm, 1. That the Ethiopians have a physical reason for the circumcisions of males, and even of females. (Recherches Philosophiques sur les Americains, tom. 10.) 2. That it was practised in Ethiopia long before the introduction of Judaism or Christianity. (Herodot. l. ii. c. 104; Strabon, Geogr. l. xii. c. 10.) "Eritis circumcisi, et circumcidetis, non ad Judæorum," says Gregory the Abyssinian priest, copied Paley's Lex Crædibilis, p. 150. Yes, in the East of Heptemvros, the Portuguese were sometimes branded with the name of uncircumcised. (L'Asie Orientale, p. 80; Ludlow's Hist. and Comment. l. iii. p. 11.)

Don the faith and the discipline of Egypt. The Monophysite churches resounded with a song of triumph, "that the sheep of Ethiopia were now delivered from the hyenas of the West;" and the gates of that solitary realm were for ever shut against the arts, the science, and the fanaticism of Europe.\*

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First es-  
tablishment of  
the Jesuits,  
A. D. 1632,  
&c.

\* The three protestant historians, Ludolphus (Hist. Ethiopia, Francofurt. 1684; Commensarius, 1691; Relatio Nova, &c. 1693, in folio); Gaidon, (Church History of Ethiopia, London, 1696, in 8vo); and La Croix, (Hist. des Christianiens d'Ethiopie et d'Armenie, La Haye, 1739, in 12mo), have drawn their principal materials from the Jesuits, especially from the General History of Teller, published in Paderborn & Vindobonæ, 1690. We might be surprised at their credulity; but their least sagacious see, the spirit of persecution, was in their eyes their most meritorious virtue. Ludolphus possessed some, though a slight, advantage from the Ethiopic language, and the personal conversation of Gregory, a free-spirited Abyssinian priest, whom he invited from Rome to the court of Sax-Gotha. See the Theologia Ethiopia of Gregory, in Fabricius, Lib. Evangelicæ, p. 714-734.



END OF THE EIGHTH VOLUME.



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